

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

In re:)	
)	
SK FOODS, LP, a California)	Case 09-29162-D-11
Limited Partnership,)	
)	Chapter 11
Debtor.)	
)	
In re:)	
)	
RHM INDUSTRIES/SPECIALTY FOODS, INC.,)	Case 09-29161-D-11
A California Corporation,)	
d/b/a Colusa County Canning,)	Chapter 11
Debtor.)	
_____)	

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Reporter's transcript of proceedings held at the
United States Courthouse, Sacramento, California on

THURSDAY, _JUNE_25,_2009

Honorable Robert S. Bardwil, Presiding

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Reported by: Patricia A. Hernandez, CSR #6875

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ALSO PRESENT:

BRADLEY D. SHARP, Trustee

GLEN CLARK, Managing Director
LESLIE NOLAN, Vice President
Duff and Phelps

STEVEN SMITH
Olam Food Processors

STEVE PETERSON
FRED ROBBINS
General Mills Representatives

1 ---oOo---

2 THURSDAY, JUNE 25, 2009

3 PROCEEDINGS

4 ---oOo---

5 THE COURT: All right. Good morning once again. This
6 is the 10:00 o'clock calendar. We have a number of things on
7 regards to RHM Industrial Specialty and SK Foods, LP. I will
8 take courtroom appearances first.

9 MR. COLEMAN: Good morning, your Honor. Kevin Coleman
10 and Greg Nuti, Schnader, Harrison, Segal and Lewis, proposed
11 counsel to Bradley Sharp, the Chapter 11 Trustee. And Mr.
12 is present in the courtroom this morning.

13 MR. LAPPING: Good morning, your Honor. Richard
14 With me are John Fredericks and Marcus Colabianchi from
15 and Strawn, special counsel to the Chapter 11 trustee.

16 MR. GINTER: Good morning, your Honor. Dale Ginter of
17 Downey Brand, LLP, proposed counsel for the Official
18 of Unsecured Creditors.

19 MR. PUTTERMAN: Good morning, your Honor. Donald
20 Putterman, Kasowitz, Benson, Torres and Friedman, LLP, for
21 Farms, LLC; SSC Farms One, LLC; and SSC Farms Two, LLC.

22 MR. PASCUZZI: Good morning, your Honor. Paul
23 Felderstein, Fitzgerald, Willoughby and Pascuzzzi for Scott
24 Salyer.

25 Also in the courtroom is Malcolm Segal of Segal and

1 also for Scott Salyer

2 MR. GARDNER: Brent Gardner, Lewis and Roca, on behalf
3 Chase Equipment Finance, Inc.

4 MR. LEVINSON: Good morning, your Honor. Marc
5 of Orrick, Herring and Sutcliffe on behalf of Bank of
6 as agent for the secured lender group.

7 MR. SPIOTTO: Good morning, your Honor. James Spiotto
8 from Chapman and Cutler on behalf of Bank of Montreal,
9 the secured lenders.

10 MR. WISOTZKEY: Good morning, your Honor. Samuel
11 Wisotzkey of Kohner, Mann and Kailas in Milwaukee
12 General Mills Operations.

13 Also in the courtroom with me today are
14 of General Mills, Steve Peterson and Fred Robbins.

15 THE COURT: All right.

16 MR. GEBHARD: Good morning, your Honor. Robert
17 of the Sedgwick Law Group here for B & G Foods, Inc.

18 MR. BERRYMAN: Good morning, your Honor. Albert
19 Berryman, Baker, Manock and Jensen along with Mark Gordon of
20 McDonough, Holland and Allen appearing for Olam West Coast,
21 Incorporated, and Olam Tomato Processor, Incorporated.

22 Mr. Stephen Smith from Olam is also present in the
23 courtroom.

24 THE COURT: All right.

25 MR. QUESENBERRY: Good morning, your Honor. Marion

1 Quesenbery of Ryan and Janowsky for Cal-Ap International,
2 Diamond Fruit, Gill Onions, Higueral Produce, River Point
3 Select Onion and Uesugi Farms, all pack and produce lien
4 creditors.

5 MR. BATES: Good morning, your Honor. Bill Bates,
6 Bingham McCutchen, for Nor-Cal Tomato Growers Association.

7 MS. ANASTASSIOU: Good morning, your Honor. Effie
8 Anastassiou on behalf of Cal. Chili, Curry Farms and
9 Farms. We are all pack and produce lien creditors.

10 MS. LEWIS: Good morning, your Honor. Megan Lewis of
11 Wilkie, Fleury, Hoffelt, Gould and Birney representing Van
12 Brothers.

13 MS. PARKINSON: Good morning, your Honor. Donna
14 Parkinson, Parkinson Phinney, representing Odenberg
15 Inc., tomato sorters.

16 MS. OELSNER: Good morning, your Honor. Julie Oelsner
17 from Weintraub, Genshlea and Chediak representing the Morning
18 Star Group.

19 THE COURT: Any other courtroom appearances? All
20 There are none.

21 I will take phone appearances.

22 MR. WILLIAMS: Good morning, your Honor. Peter
23 of Anastassiou and Associates with counsel in the courtroom,
24 Effie Anastassiou, representing Cal. Chili, Curry Farms and
25 Winchester Farms.

1 MR. ROLDAN: Good morning, your Honor. Vincent Roldan
2 DLA Piper, counsel for West Lake Farms.

3 MR. McQUAID: Good morning, your Honor. Michael
4 McQuaid, Carr, McClellan, Ingersol and Thompson representing
5 R.F. MacDonald Company, Inc., equipment leasor.

6 THE COURT: Are there any other phone appearances?

7 All right. Mr. Coleman, you may proceed.

8 MR. COLEMAN: Thank you, your Honor. Well, we do have
9 number of things on the calendar. We had filed late last
10 a proposed agenda for the hearing. I don't know if you had a
11 chance to take a look at that.

12 THE COURT: I did.

13 MR. COLEMAN: I was actually going to suggest that we
14 take what is on the agenda slightly out of order because I
15 that resolutions that we have been able to reach will
16 substantially narrow the matters that the Court will be
17 to address over the course of the hearing.

18 THE COURT: Before we do that let me just ask,
19 procedurally the initial motion to approve bidding procedures
20 and the order that resulted is motion control number RAL-212;
21 correct?

22 MR. COLEMAN: I believe so, yes, your Honor.

23 THE COURT: There were two subsequent motions filed in
24 the recent past, I believe around the 15th. One was a motion
25 approve a sale and the second was a motion to assume an

1 contract.

2 A week ago or so the Court when it was dealing with
3 housekeeping issues at the end of a hearing inquired as to
4 the sale motion was necessary when I was of the opinion or at
5 least the belief that the bidding procedures order really
6 addressed the sale aspect, and the Court denied a motion or a
7 request for an order shortening time on that specific motion.
8 Do you recall?

9 MR. COLEMAN: Yes, I recall the discussion.

10 THE COURT: That is the motion that was the motion
11 control number RAL-22 which appears to be on -- which appears
12 be the motion control number under which the order was -- the
13 sale order was proposed this morning. The debtor renewed its
14 request for an order shortening time on motion control number
15 RAL-23, and I did grant that order shortening time.

16 So my understanding of what is on calendar today is
17 RAL-21 and RAL-23, and I still am not sure why RAL-23 is
18 necessary in that the order that was issued under motion
19 number RAL-21 outlined and specifies the procedures for
20 and assigning a contract. I did look and tried to compare,
21 the best I could conclude was that RAL-23 adds maybe a couple
22 new contracts to the Exhibit A, and for that reason I granted
23 the order shortening time with RAL-23.

24 Now, are you following me?

25 MR. COLEMAN: Yes.

1 THE COURT: So am I missing something, or today if the
2 Court issues an order approving the sale, it's under RAL-21?

3 MR. COLEMAN: If I can allow Mr. Lapping to respond.

4 MR. LAPPING: Yes, your Honor, that's fine.

5 THE COURT: All right. I just want to -- and
6 Mr. Lapping, RAL-23 which is the motion to assume and assign
7 contracts, I'm summarizing that the reason that that was
8 as opposed to the stand-alone order on RAL-21 is because
9 was a handful of contracts that were added to RAL-23?

10 MR. LAPPING: That's correct, your Honor. As we
11 proceeded we did add some, and that became one of the reasons
12 for the motion.

13 THE COURT: All right. I just wanted to
14 may proceed.

15 MR. COLEMAN: Thank you, your Honor. I guess what I
16 would like to take up first is a motion to approve the
17 post-compromise between the Trustee and to some extent other
18 parties and albeit SSC, all of the SSC farming entities with
19 regard to our disputes whether or not the waste water
20 agreements were properly terminated prior to bankruptcy.

21 THE COURT: I applaud the parties. I know that they
22 had a lengthy session and I know that they have been spending
23 lot of time preparing for the various activities in this case
24 and that they were successful in reaching a settlement that
25 mediated by Judge McManus. The question is what notice has

1 provided?

2 MR. COLEMAN: Well, we did serve notice last night
3 we filed the motion on the U.S. Trustees's office, the
4 for the Creditors' Committee and attorneys for the bank

5 I will tell your Honor that given the shortness of
6 we have not had time to broadcast notice to all creditors as
7 would be preferred in a circumstance like this but --

8 THE COURT: What happens if I continue that hearing to
9 Monday and notice goes -- I will comment that I issued an
10 limiting mailing, and one of the aspects that mailing is
11 for is 9019 compromises. So you would not have to -- I
12 would be the limited notice. What happens if we proceed with
13 the sale motion and I simply continue the hearing on the
14 compromise to Monday?

15 MR. COLEMAN: Well, I think the practical risk that we
16 face is that if we don't have an answer today, we have to
17 continue to, you know, prepare for the trial assuming that if
18 there is an objection and for some reason the Court does not
19 approve it. I guess --

20 THE COURT: I can tell you it would take something
21 am not -- let me comment. I have reviewed the compromise. I
22 understand the landscape of this case. I am very much
23 to approve the compromise. I just want to make sure T's are
24 crossed and the I's are dotted for appeal or any other

25 Is the trustee satisfied with the notice that has been

1 given for approval of the compromise?

2 MR. COLEMAN: Well, I guess to answer the question
3 directly, I think that the notice was as much as we could do
4 under the circumstances. I would not characterize it as

5 THE COURT: Does that cause heartburn? I mean my
6 is I am wondering if just prudence doesn't dictate to
7 the hearing on the compromise to Monday. Is there a reason
8 to?

9 MR. COLEMAN: Well, I guess what I would ask is if
10 address certain issues or certain aspects of the motion, give
11 parties an opportunity to address or raise any objections
12 they think that they might now get the Court's comments on
13 Then if we get through that, I would propose we do kick it
14 until Monday and we will get a fuller notice out and give
15 one last chance to complain about it. But I guess what I
16 like to --

17 THE COURT: You would like to have the Court address
18 today?

19 MR. COLEMAN: I would, because if we can -- if we at
20 least understand that we are not going to be dealing with the
21 objections of anybody who is in the courtroom today, that
22 allow us to move forward with a variety of other things.

23 THE COURT: All right.

24 MR. COLEMAN: And we did want to get -- there is a
25 change to the proposed compromise with the SSC entities,

1 would want to put that on the record today.

2 MR. PASCUZZI: Your Honor, may I address? Paul
3 your Honor.

4 The problem with your Honor approving the compromise
5 today is that if -- without approval of the compromise, the
6 entities and the Salyer objections to the sale are not
7 So I understand the Court's concern about timing and
8 we are not prepared to go forward.

9 THE COURT: Mr. Pascuzzi, let me ask you this: I'm
10 presented with a conundrum or dilemma. If notice -- if I
11 ruling, and I am fully aware that I can approve the
12 and it is my inclination that that's what I am going to do;
13 if notice is inadequate, who is that going to come back to
14 on its appeal?

15 MR. PASCUZZI: Well, I understand, your Honor. You
16 it's kind of an issue with sales and that we view this as
17 and parcel of your approval of the sale. So certainly
18 some risks but there are also some protections to parties
19 sale that has been approved and to compromise in connection
20 the sale, and I would argue, your Honor, that all of these
21 issues have been T'ed up and that really in sum we are
22 our objection to the sale. So in connection with the sale
23 hearing, that is what we are doing.

24 Now, certainly out of an abundance of caution and
25 to make sure that notice is the best as possible we T'ed it

1 as a 9019 motion, but I think that the Court can approve the
2 settlement today as a resolution of the objection to the sale
3 and move forward with the sale today, which as you understand
4 course is very important.

5 THE COURT: All right.

6 MR. PUTTERMAN: Donald Putterman for the SSC entities.

7 Beyond endorsing what Mr. Pascuzzi had to say, your
8 Honor, the settlement as modified yesterday which was
9 by Mr. Coleman, if anything is more favorable to the
10 We were willing to go -- we were willing to go along with
11 because we think that it is extremely important to resolve
12 get the sale done and keep the plant operating in time for
13 pack for the sake of the growers and the employees, and I
14 urge your Honor to move forward and approve it today.

15 MR. GINTER: Good morning. Dale Ginter on behalf of
16 Committee.

17 I appreciate the conundrum the Court is in with the
18 notice. This has been a very difficult deal to bring the
19 parties together and more importantly perhaps to hold them
20 together, and I think that on balancing the risk the
21 would be in favor of your Honor going forward today.

22 THE COURT: All right. Let me ask, is there anyone in
23 the courtroom that opposes the compromise?

24 Well, before I do that, you say that there has been a
25 modification to the compromise?

1 MR. COLEMAN: Yes, your Honor. I can describe what --
2 I can describe the original proposal and then the
3 that was necessary.

4 Essentially under the agreement that was reached two
5 days ago with Judge McManus the Trustee agreed to pay a sum
6 equal to two years worth of the fees due under the relevant
7 discharge agreements at the time of closing, plus a cure --
8 amount required to cure defaults. We estimate the aggregate
9 amount of that money to be something like 1.3 million
10 That money would be paid to the SSC entities, the counter
11 parties to those agreements. It would be completely
12 from any later claims that may be asserted by the Trustee,
13 Creditors Committee subsequently and the Trustee and the
14 So the idea being that money was just hands-off completely
15 any claims by the estate because, as I believe you recall, we
16 have a pending complaint seeking substantive consolidation of
17 the assets of these entities and the estate. So that was one
18 provision of the agreement.

19 The second was a condition to the SSC entities
20 obligation to go forward under the agreement was that the
21 Trustee obtain the agreement of the successful bidder at our
22 auction to purchase approximately 4 million dollars worth of
23 tomatoes that are being grown by the SSC entities and other
24 Salyer related -- the farming entity as we call it. We were
25 unable to -- well, excuse me. As with the -- or somewhat as

1 with the money that would be paid on account of the discharge
2 agreements, any money that was paid to the farming entities
3 under the tomato contracts would be free and clear of any
4 by, in this instance, the Trustee, any subsequently appointed
5 trustee, the Creditor Committee and the estate. Not
6 any claims by the banks.

7 The last feature of the agreement was that the
8 would make his best efforts to obtain an agreement with the
9 successful purchaser of the assets to enter into an agreement
10 with another company called West Lake, West Lake Farms, I
11 believe, to do the harvesting.

12 THE COURT: Right.

13 MR. COLEMAN: And then in exchange for all of that,
14 discharge agreements would be modified to a two-year term
15 one-year option to extend. We would have the ability to --

16 ---oOo---

17 [Discussion off the record.]

18 ---oOo---

19 MR. COLEMAN: Oh, yes. I'm sorry. Then the executory
20 contracts would be -- they would be deemed executory
21 They would be modified. We could assume them.

22 THE COURT: Correct.

23 MR. COLEMAN: Then the final feature of this was that
24 Mr. Salyer's daughters and their trust would be dismissed
25 without prejudice from our supplement consolidation action.

1 We attempted over the course of yesterday to try to
2 secure the agreement of Olam or the successful bidder to
3 purchase the tomatoes. It was not possible to reach the
4 under which they were willing to do that, so we were facing a
5 situation of not being able to perform an essential condition
6 what had been the agreement prepared on Tuesday. Since that
7 time we have had further discussions with the SSC entities,
8 they have agreed to modify the arrangements so that the
9 is only required to make his best efforts to secure the
10 the tomatoes.

11 And then in exchange for that, if he is successful in
12 getting a deal on the harvesting side of this, any funds that
13 get paid through, well, loosely described as the Salyer
14 would be free and clear.

15 THE COURT: Enjoy the same protection?

16 MR. COLEMAN: Enjoy the same protections, yes. Not
17 protections from any claims by the banks but the more limited
18 protection that had been afforded to the tomato money.

19 The Official Committee of Unsecured Creditors has
20 negotiated for a provision that would cap the aggregate
21 of I guess what I will call the insulated money to \$5.3
22 So I mean we believe that on balance the proposal is fair and
23 equitable; that, you know, as modified it certainly would
24 the standards of the ANC case.

25 So I guess I would ask -- before I go into that, I

1 would I ask for counsel of the SSC entities and Mr. Salyer if
2 they would conform their agreement to these terms?

3 MR. PUTTERMAN: One slight correction. I believe,
4 Honor, that the cap on the aggregate insulated money is
5 the aggregate of the tomato and the harvest, the tomato and
6 harvest money. The cap does not apply to the waste water
7 contract money.

8 With that correction, your Honor, as I indicated a
9 few minutes ago, we gave up a -- I'm sorry.

10 ---oOo---

11 [Discussion off the record.]

12 ---oOo---

13 MR. PUTTERMAN: Mr. Pascuzzi has just corrected me. I
14 think the cap is to everything, including everything.

15 MR. GINTER: That's correct.

16 MR. PUTTERMAN: Okay. My apologies, your Honor.
17 have been done a little bit rushed this morning.

18 We gave up a considerable benefit in the settlement
19 had been negotiated on Tuesday before Judge McManus, and that
20 was basically the certainty of having a home for a very
21 substantial tomato crop. Nonetheless, balancing all of the
22 considerations, and again particularly bearing in mind the
23 employees of the debtors, many of whom have worked for many
24 years, and the growers who have had long-time
25 felt we had confidence in the Trustee's agreement to use his

1 best efforts, and we felt that under the circumstances this
2 the appropriate thing to do, and we do fully support the
3 settlement.

4 THE COURT: All right.

5 MR. PASCUZZI: Paul Pascuzzi, your Honor.

6 One other benefit to the estate that is described in
7 papers and isn't a change or anything from what was in the
8 motion is that the estate or the parties to the substantive
9 consolidation proceeding waive any Rule 11 claim for the
10 of the daughters and their trusts in the adversary
11 and that is just for --

12 THE COURT: But that was part of the initial

13 MR. PASCUZZI: It was part of the initial settlement.
14 want to make sure as we were describing it, and we are in
15 agreement, your Honor.

16 THE COURT: Okay. Let me ask: Is anyone opposing the
17 settlement as modified in court this morning? I will take
18 courtroom appearances first. All right. No one in the
19 courtroom opposes the compromise as modified in the

20 Is there anyone on the phone making a phone
21 that opposes the compromise in essence which allows the
22 go forward, that opposes the compromise as modified in court
23 today?

24 MR. ROLDAN: Your Honor, this is Vincent Roldan,
25 to West Lake Farms.

1 We are opposed to settlement at this point. For the
2 record, West Lake reserves its right. I didn't receive -- I
3 didn't receive the motion until -- the e-mailing receipt just
4 came in just a few moments ago. It sounds as though on the
5 record that the settlement does not affect the assumption
6 contracts, the assumption of the West Lake contracts to a
7 successful bidder Olam, and if I could just ask the Trustee
8 counsel to Olam to make that clarification that West Lake's
9 contracts are not impaired by the settlement with the Salyer
10 entities, then I think we are okay.

11 MR. COLEMAN: Your Honor, yes, I can confirm that
12 in the proposed settlement with the SSC entities would in any
13 way affect West Lake's rights.

14 THE COURT: All right.

15 MR. GINTER: Your Honor, if I might be heard a moment.
16 Could I request a brief recess while I go and attempt to
17 with my Committee? We learned of this change at about 10:00
18 this morning, and I'm getting conflicting votes from my
19 Committee on this issue. I don't presently have the
20 to agree to the deal that was just put on the record.

21 MR. BERRYMAN: Your Honor, Albert Berryman for Olam.

22 I believe there was a question that West Lake's
23 addressed for Olam to comment on, and we understand the
24 that Trustee's counsel has represented, that there will be no
25 effect on the West Lake tomato contracts.

1 THE COURT: I looked at the settlement terms this
2 and I did not see that it had any bearing on any other
3 contracts other than the contracts, the purported contracts
4 exist or don't exist between or among the parties now.

5 I will take a short recess, but I think that that is
6 something that needs to be figured out very quickly.

7 MR. GINTER: Understood, your Honor.

8 THE COURT: I will resume -- how long do you need?

9 MR. GINTER: Could we do fifteen minutes, your Honor?

10 THE COURT: All right. I will resume at 11:15.

11 MR. COLEMAN: Thank you, your Honor.

12 ---oOo---

13 [Brief recess.]

14 ---oOo---

15 THE COURT: Good morning once again and please be
16 All right. Before we proceed I am going to implement a
17 make this proceeding go hopefully more smoothly. Everyone is
18 instructed to turn off their cell phones.

19 ---oOo---

20 [Discussion off the record.]

21 ---oOo---

22 THE COURT: All right. Mr. Coleman.

23 MR. COLEMAN: Your Honor, thank you for allowing us to
24 take a break. I think it was time well spent. The ten or
25 fifteen minutes we were out in the hallway I think saved us

1 hours of proceedings before you and other things.

2 My understanding, and I'll ask Mr. Ginter to confirm,
3 is that the Creditors Committee is now fully supportive of
4 the agreement with the SSC entities as modified on the record
5 today.

6 MR. GINTER: Yes, your Honor, the Trustee and I were
7 to speak with the Committee Chairman, and the Committee is
8 on board.

9 THE COURT: All right. I believe where we had left
10 then, I had polled those inside the courtroom and there was
11 objection to the compromise as proposed.

12 I polled those on the telephone, and I think we had
13 West Lake I believe it was. The creditor just wanted
14 confirmation that it didn't alter their contract rights one
15 or the other.

16 Is there anyone on the phone that wishes to be heard
17 objects to the proposed compromise as modified? All right.
18 There is no one.

19 All right. Mr. Coleman.

20 MR. COLEMAN: I guess, your Honor, I would ask that in
21 light of the fact that most of the interested parties in this
22 case are actually in the courtroom today, that you would
23 the compromise so that we can proceed with the other matters.

24 THE COURT: With the parties understanding that
25 risk, I have given it thought and I have looked at the

1 compromise, I have considered the modifications and I am
2 prepared to go ahead and approve the compromise today.

3 With that, let me just -- what I anticipate doing is
4 the sale motion is approved today, I will put certain
5 on the record in regards to the exigent circumstances and
6 urgentness to have the debtor sell the assets, and this
7 compromise is a component that without the compromise the
8 would not go forward today and may not be able to go
9 all. With the compromise which has been negotiated among the
10 Trustee, Mr. Salyer, some related entities, the Creditors
11 Committee and with the bank, the major secured lender, notice
12 has been short but there has been notice. Most of the major
13 players are in court today or on the phone. Nobody opposes
14 compromise.

15 Under these circumstances I am prepared to make
16 findings that, you know, in considering the likelihood of
17 success on the merits, the litigation involved and the amount
18 interest of the creditors, that it is appropriate to
19 compromise today.

20 I will comment, I think it's something of a gray area.
21 Mr. Pascuzzi indicated that, in essence, it's the horse
22 that takes place on the sales motion, and I don't know if it
23 needs to be approved as a compromise but for precautionary
24 reasons I will, though, approve the compromise. Really it
25 seemed to me a majority of the actual concessions were in

1 agreement that, in fact, the underlying contracts are
2 in nature and may be assumed, quantifying the cure
3 things along those lines which often take place in the
4 of a sale and contract assignment motion.

5 But notwithstanding, under the circumstances of this
6 case I am prepared to go ahead and approve the compromise.

7 I would suggest two things before I leave this issue.
8 Mr. Coleman, if your office would submit an order shortening
9 time allowing for hearing of the compromise motion today at
10 10:00 o'clock consistent with the service that your office
11 affectuated or whomever it is yesterday afternoon or evening,
12 submit an order shortening time on that motion so that at
13 we have that procedural issue tied up.

14 MR. COLEMAN: Would you like a motion along with
15 just submit the order?

16 THE COURT: Well, did you not -- I thought a motion
17 filed today? I looked at this document. I thought that I
18 it was either a notice of the settlement or a motion to
19 the settlement. There was a motion filed --

20 MR. COLEMAN: There was a motion filed today.

21 THE COURT: You may submit an order shortening time on
22 that motion as requested in open court today. So you don't
23 to do an application, just recite the request for the order
24 shortening time in open court, under the circumstances it was
25 granted, and the notice can be consistent with the notice of

1 the --

2 MR. COLEMAN: We'll do that, your Honor. And then I
3 have -- I think we can upload --

4 THE COURT: On the order approving the settlement, who
5 it that is going to sign off on the form of that order?

6 MR. PASCUZZI: Your Honor, this is Paul Pascuzzi.

7 I think we should as well as Mr. Putterman for the
8 SSC entities.

9 MR. COLEMAN: I think we also would need the Creditor
10 Committee's counsel's signature.

11 MR. GINTER: Yes.

12 MR. COLEMAN: And the attorney for the bank group, the
13 agent for the bank group.

14 THE COURT: All right. You may submit an appropriate
15 order with those signatures.

16 MR. PASCUZZI: Your Honor, one more thing in
17 with the settlement consistent with your Honor's statement
18 comments as to the urgency of that matter to the extent that
19 6004(h) or even 4001(a)23 with the ten-day stay, we ask that
20 the Court waive those to the extent they're applicable. Also
21 number 3.

22 THE COURT: Under the circumstances I'm prepared to go
23 ahead, and you may insert that in the order.

24 MR. PASCUZZI: Thank you, your Honor.

25 MR. COLEMAN: Okay. I think that makes many other

1 on the agenda a little easier.

2 I guess what I would turn to is items or item 4 on the
3 agenda which is our -- well, which is Mr. Salyer's motion for
4 protective order and our counter motion to compel his
5 at a deposition. I think that the resolution of the
6 moots that motion.

7 THE COURT: So calendar item number 2-RHM, that is a
8 motion for protective order, and the companion motion in the
9 SK Foods is calendar item 5. Are those motions going to be
10 withdrawn or are they going to be denied?

11 MR. PASCUZZI: Your Honor, to the extent they are
12 withdrawing their request to depose Mr. Salyer because that
13 in connection with the litigation over the discharge
14 that has now been settled, there is no need for a
15 order. So as long as they are withdrawing their deposition
16 request, we can drop the motion.

17 MR. COLEMAN: Yes, your Honor, in light of the
18 of the settlement there is no need to go forward with the
19 deposition.

20 THE COURT: So Mr. Pascuzzi, it is your motion. Is
21 motion being withdrawn by the moving party?

22 MR. PASCUZZI: Yes, your Honor.

23 THE COURT: So calendar item number 2 and calendar
24 number 5, those motions are withdrawn by the moving party.

25 On the motion to approve the compromise, I'm assuming

1 that with the compromise the parties will also submit a
2 stipulation for dismissal of what I have turned into as an
3 adversary proceeding?

4 MR. COLEMAN: We will also do that, your Honor.

5 THE COURT: All right.

6 MR. COLEMAN: Okay. With that, I guess I would turn
7 podium over to Mr. Lapping who will address the motion to
8 approve the sale and the companion motion with respect to
9 executory contracts.

10 MR. LAPPING: Good morning, your Honor. Obviously we
11 have good news. We do have a sale to approve. I believe I
12 going to walk through this and try to take both motions at
13 same time since they are very inter related. I'm going to
14 about APA that we filed with the exhibits and how that
15 from various other things, our report on the auction and our
16 conclusion of identifying the successful bidder.

17 I will walk through the various objections, and then
18 will need you to determine whether there are any that are
19 unresolved that need to be addressed.

20 We will talk about some various technical
21 adjustments that affect the scope of assumption assignment of
22 various documents. We will talk about the due diligence that
23 was done, and we would like to proceed, if possible, by an
24 of proof but I'll explain that when we get there.

25 Then finally we have submitted -- I know that a red

1 of the proposed orders for the assumption and for the
2 can walk through those because obviously those terms I assume
3 your Honor will have some questions about, and we can offer
4 explanations, hopefully.

5 When we filed the asset purchase agreement, which was
6 negotiated at great effort, we included some exhibits, and
7 that I guess I want to focus on is Exhibit 1.5 and Exhibit
8 wherein the number of executory contracts and leases that
9 identified as being assumed by the buyer, Olam West Coast,
10 and actually its designee just for the record is Olam Tomato
11 Processors, Inc., will be the ultimate purchaser. In that
12 process we did reduce the number of contracts from the cure
13 which was very long. Now we have a shorter list, and it may
14 have gotten even shorter to some extent.

15 Then we also discovered in the technical side some
16 contracts that we need to assume, and we will describe to
17 Honor the stipulations we have with respect to that.

18 We held the auction yesterday. It commenced
19 at 9:00 a.m. at the offices of Winston and Strawn in San
20 Francisco. We only had one qualified bidder at that
21 second qualified or second bidder who initially qualified was
22 not able to obtain all of the qualifications and particularly
23 the funding for its operation post closing.

24 At the auction which because of the negotiations that
25 your Honor heard about earlier between, you know, in an

1 to add the Salyer settlement to and draft it on to the
2 purchase agreement, it actually was not concluded until 7:15
3 in the evening, at which point we went on the record and with
4 no other bidders determined that our stocking horse bidder
5 Olam was going to, in fact, be the winning bidder at 39
6 dollars as described in detail in the asset purchase

7 So we have a number of objections. If I may, I would
8 like to walk through those basically in the order that they
9 appear on the docket.

10 Docket number 223 is an objection by Ed Curry, dba
11 Farms, based on the cure amount. And the resolution of
12 that this particular contract will not be assumed.
13 is possible that it will be treated separately under our PACA
14 fund. The banks have set up a fund to pay qualified PACA
15 after we do the final due diligence on their qualifications.
16 while it's not necessarily the case, we do have a fund for
17 But in the event that -- you know, to the extent that Curry
18 objected to the assumption of its contract, the answer is we
19 are -- it will not be assumed.

20 THE COURT: Okay.

21 MR. LAPPING: The next docket number 261 is Salinas
22 Valley Memorial Valley Systems. Again, this was an objection
23 based on the cure amount, and again this lease, which is a
24 of an office building, will not be assumed.

25 Number 267, West Lake Farms, Inc. West Lake's

1 is being assumed. However, as noted on page 3 line 23 of the
2 objection, there is no amount presently owing. The amount
3 was proposed is an amount that would essentially have been
4 if we had rejected the contract and represents the estimated
5 value of tomatoes going forward. With the assumption of this
6 contract, those tomatoes will be paid for. I believe that
7 agreed price -- and I will pause because I know West Lake's
8 attorney is on the phone.

9 MR. ROLDAN: That's correct, your Honor. I understand
10 that West Lake's contracts are being assumed, and I did
11 APA. It appears all the liabilities under the contracts are
12 being assumed, including the payments of the tomatoes, so it
13 appears that our objection has been addressed.

14 THE COURT: Those on the phone, you will need to
15 yourselves. Mr. Roldan, go ahead and just state your name.

16 MR. ROLDAN: Yes, your Honor. I apologize for not
17 identifying myself. Vince Roldan, counsel to West Lake
18 and I just spoke.

19 MR. LAPPING: Item or rather docket number 271 through
20 273 was an objection from B & G Foods, Inc. Again, the
21 resolution for that one is that we will not be assuming that
22 contract. I believe counsel for B & G is present today.

23 MR. GEBHARD: Yes, your Honor, that is me.

24 MR. LAPPING: That was Mr. Gebhardt.

25 And item 284, the Bank of Montreal filed a protective

1 objection in the event that things went arye. They have not,
2 I believe that objection has been resolved.

3 MR. SPIOTTO: Yes, your Honor.

4 MR. LAPPING: That was Mr. Spiotto.

5 The Odenberg Engineering contract is being assumed.
6 is item -- or rather docket number 288 through 290. I
7 that resolves the objection. Counsel for Odenberg is

8 MS. PARKINSON: That's correct.

9 MR. LAPPING: We had a lengthy objection from Kraft
10 Foods, pleadings number 292 through 294 and 296 through 298.
11 Here again the resolution of that is that the contract will
12 be assumed. I don't believe the counsel for Kraft is
13 but we are not assuming the contracts. So the objection I
14 is rendered mute.

15 Item or docket number 300 through 301 is an objection
16 General Mills. Counsel for General Mills is present. This
17 was a fairly involved compromise. As part of the assumption
18 essentially we agreed to a cure amount that was acceptable to
19 General Mills. We agreed with them that their equipment that
20 was owned by General Mills and is present as part of the
21 Williams plant in particular and possibly -- I don't think
22 had any in Lemoore but certainly in one of the plants that
23 asserted an ownership right, we conceded that, in fact, it's
24 true, they own the equipment. It's not being sold, it is
25 being -- their contract will be assumed, in particular one of

1 their three contracts. They identified several, but the one
2 that is really the operating one is from 2003 forward, and we
3 have a detailed explanation of how that works in the proposed
4 order for the assumption and cure of the contracts, the
5 assignment. But essentially that is the nub of it, that it
6 will be assumed, and they have agreed to reduced cure
7 order to enable us to do that and finance and get all of
8 parties to move in cohesion.

9 THE COURT: Very well.

10 MR. WISOTZKEY: Your Honor, Sam Wisotzkey on behalf of
11 General Mills.

12 I reviewed the red lines to the assignment order last
13 night, and that appears to accurately reflect the agreement
14 we reached with the Trustee.

15 THE COURT: Very well.

16 MR. LAPPING: Next we have a series of claims by
17 of Marion Quesenbery. They are number 303. I believe they
18 your clients, Diamond Fruit, number 304, Gill Onions, number
19 305, Select Onions, number 306, River Point Farms and number
20 308, Higueral Produce. Again, these were all objections
21 on cure amounts. They are potentially within the PACA funds
22 subject to due diligence. The contracts will not be assumed,
23 and we believe that resolves those objections.

24 MR. QUESENBERRY: Yes, unfortunately it does, your
25 We hope to reach new agreements with Olam, but thank you.

1 THE COURT: Very well.

2 MR. LAPPING: The next objection that we received is
3 Chase Equipment Finance, Inc., numbers 309 and 310. This one
4 was concluded by moving the -- essentially Chase had a
5 combination of leases and secured financing and it related to
6 equipment mostly in Williams but some in Lemoore, I believe.
7 The resolution of that was to -- on Exhibit 1.6 there is a
8 reflection of an amount that will be paid to Chase as part of
9 the proceeds to essentially cure defaults under the leases
10 essentially pay them off for the value of their equipment. I
11 believe counsel for Chase is present.

12 MR. GARDNER: Your Honor, Brent Gardner on behalf of
13 Chase Equipment Finance, Inc.

14 We have reached an agreement. I haven't seen all of
15 signatures on that agreement but I understand that it's been
16 signed on by the Trustee and by the agent for the secured
17 lenders. We have also signed that. The agreement
18 that there will be approval of the sale and that the sale
19 close.

20 Now, it's a cart and horse problem that we have here
21 unlike the situation that we had with the executory contracts
22 wherein the -- if those anticipated things don't occur, if
23 sale doesn't close, then we need to be able to reserve our
24 objections. So provided -- provided those things do happen,
25 then we have reached an agreement that the parties have

1 to.

2 THE COURT: All right. I was assuming that any
3 modification to an agreement is premised on the closing of
4 sales transaction.

5 MR. LAPPING: That is the understanding, your Honor.

6 MR. GARDNER: That is certainly the case with ours.

7 MR. LAPPING: I am going to take one out of order,
8 Honor, because it actually wasn't filed but there was a
9 reference to it earlier, and it relates to Exhibit 1.6. We
10 approached by R.F. MacDonald, and I believe their attorney is
11 the phone, about an assumption or cure of their lease. It
12 unclear. We viewed it as a financing, not an actual
13 we reached an agreement to pay \$196,135 which was a final
14 payment, and I believe that is reflected on Exhibit 1.6. I
15 believe their counsel is on the phone.

16 THE COURT: All right.

17 MR. McQUAID: Yes, your Honor. Michael McQuaid for
18 R.F. MacDonald.

19 That is my understanding that we reached a stipulation
20 that R.F. MacDonald will be paid \$196,135 on or before

21 THE COURT: All right.

22 MR. LAPPING: Going back to the docket order, we

23 MR. GARDNER: Excuse me. May I? I'm sorry to
24 your Honor. I just wanted to point out on the Chase
25 one of the things that it is subject to is Court approval of

1 that agreement. We all contemplate that we will be
2 the Court some formalized motion to approve that agreement.

3 THE COURT: Well, let me ask. I was contemplating
4 it would be embodied in the sale order. I mean I am not --
5 we looking -- I mean my understanding is that this needs to
6 close by the end of the month. So if that is the case, you
7 not contemplating filing a new motion or is it a stipulation?

8 MR. GARDNER: It's not something that we have really
9 addressed, but I'm certain that it can be done to coincide
10 the --

11 THE COURT: I'll leave the parties to their own
12 on this but, you know, I guess what I am -- just off the
13 my head, we are not seeing that it would be something such as
14 motion we would have to set for a hearing, just a stipulation
15 embroiled in the sale order that I would receive is fine.

16 MR. GARDNER: Your Honor, there is an agreement that
17 been signed by Chase and by the Trustee and by the agent
18 secured banks.

19 MR. SPIOTTO: And I think it recognizes, as your Honor
20 mentioned, that it is all subject to the transaction closing.
21 We can attach that to the sales order if that is acceptable
22 just, you know, indicate in the order, put a paragraph in
23 your Honor has approved.

24 THE COURT: Very well.

25 MR. SPIOTTO: Thank you, your Honor. That will work.

1 MR. LAPPING: Let's see. On docket -- Richard Lapping
2 again.

3 On docket numbers 332 through 334 we had an objection
4 from ConArga Foods. We corresponded with them as well and
5 stipulated that we would not assume their contract, and
6 therefore their objection is muted.

7 The last three objections that we had based on the
8 amounts were from Scott Salyer, item or docket number 337,
9 Farming, et al, 339 and 338, I believe, and I believe those
10 objections are resolved by the current settlement.

11 ---oOo---

12 [Discussion off the record.]

13 ---oOo---

14 MR. LAPPING: They are not. They are actually not
15 entirely resolved. I think I'll let Mr. Pascuzzi address
16 this.

17 MR. PASCUZZI; Your Honor, there are just some minor
18 points and I think they are really drafted of the APA. On
19 fixed assets schedule there are some vehicles, eight
20 cars and some bins, 10,000 wooden bins that we contend are
21 property of the debtors. I believe the cars have been
22 and I believe the bins have been removed, so it's a matter of
23 just verifying the eight trucks.

24 Counsel has represented to me that they are not trying
25 sell anything that the debtors don't own, and that they will

1 look into it and get it resolved. I am comfortable with
2 your Honor, and if we have an issue, we will be back before
3 Court.

4 The other issue has to do with how the discharge
5 agreements are dealt with in the asset purchase agreement.

6 THE COURT: Discharge agreements? You mean the
7 contracts?

8 MR. PASCUZZI: The discharge contracts that we have
9 compromised, any issues about whether they were terminated.
10 There should be -- the way the asset purchase agreement is
11 structured is they are subcontracting the rights to Olam
12 those discharge agreements. There should be three
13 because there are three discharge agreements, and counsel has
14 acknowledged that that is correct.

15 I have an issue with one of the terms in the
16 regarding use, not purporting to restrict the owner's of the
17 property's use, only Olam's use. That I believe will be able
18 get resolved as well.

19 Then Section 1.10 of the asset purchase agreement
20 about the waste discharge property, and there are some issues
21 about whether that is an overly-broad description of the
22 property that is subject to the discharge agreements, but I
23 spoken to counsel about it and I am confident we will get
24 resolved with some drafting or some provisions in the order.
25 I believe we will get those resolved, your Honor.

1 I'm prepared to step down and let things move forward.
2 just ask that I sign off on the order so that we make sure we
3 get it done.

4 MR. LAPPING: Your Honor, addressing these in order --
5 well, let me do them in reverse.

6 I think counsel pointed out to me what I understand to
7 a meets and bounds description of the land doesn't quite
8 coincide with what is actually in the contracts and that
9 can be reformed, we believe, under the terms of the order
10 allows for non material changes in the contract to be made
11 adjusted.

12 With respect to the bins, the bins are not part --
13 will not be sold. They are not part of the contract.

14 My understanding is that the cars are still on the
15 subject to question of ownership is something that will be
16 decided. We will only be selling them if what we own -- if
17 own it, and I'm not sure that we know how that will be
18 at this point.

19 MR. BERRYMAN: Your Honor, may I be heard? Albert
20 Berryman for Olam.

21 There are two vehicles that were discussed yesterday
22 I believe is what Mr. Pascuzzi and Mr. Lapping are
23 As we sit here this morning those vehicles are still on the
24 asset purchase list. However, we have agreed to discuss
25 There is a concept over their ownership, that and SK. The

1 Trustee has pointed out to us that he would not be able to
2 something that he doesn't own, and we acknowledge that
3 But I think people will agree as we sit here right now that
4 issue is not resolved.

5 MR. LAPPING: That's correct, your Honor. The cars
6 listed but the ownership is uncertain.

7 THE COURT: All right.

8 MR. LAPPING: I think the only other objection that
9 was to the sale itself, and I think that was also by the
10 Farming entities which I believe has now been resolved as
11 settlement is contingent on our approving the sale.

12 MR. PASCUZZI: Correct, your Honor.

13 THE COURT: All right. The objections by Salyer,
14 Mr. Salyer and related entities in regard to the actual sale,
15 those objections have been approved?

16 MR. LAPPING: I believe that's correct, your Honor.

17 THE COURT: Mr. Pascuzzi?

18 MR. PASCUZZI: Yes, Your Honor, contingent on approval
19 the settlement.

20 THE COURT: All right.

21 MR. LAPPING: I believe the only other objection
22 have that is a live one is the Morning Star objection.
23 an objection that basically, as I understand it, is that
24 are allegedly trade secrets that relate back to a dispute
25 had it's genesis it says in early 2006. There is no evidence

1 submitted other than a representation that a complaint was
2 in State Court.

3 We think that the objection is not well taken. As the
4 Court has already been informed, Morning Star is a competitor
5 these companies and would benefit from the liquidation and
6 piecemeal of their equipment so that they are not in
7 and its objection suggests that it does not identify any
8 secrets. It's hard to envision what the trade secrets in the
9 tomato business really could be, and we believe that the
10 objection is not well taken.

11 THE COURT: All right.

12 MS. OELSNER: Your Honor, Julie Oelsner on behalf of
13 Morning Star.

14 We are not objecting to the sale as proposed today.
15 made a limited objection because there is litigation
16 State Court which is stayed by the operation of the filing of
17 this case.

18 The representation that we would have preferred
19 be piecemeal is totally irrelevant and untrue. We simply
20 to put the parties on notice that due to this litigation, the
21 allegations are there and we do believe trade secret
22 documentation from Mr. [inaudible] as well as Morning Star
23 its entities may be in possession of the Trustee. I asked
24 Trustee this morning if there could be some process made to
25 protect our alleged secrets that have been taken by a former

1 employee.

2 That is all that we are asking, your Honor, that both
3 parties are put on notice that. Number one, we don't think
4 any of our trade secrets can be sold, and I don't think the
5 Trustee is saying that. And secondly, that should any of our
6 trade secrets, confidential information or personal
7 be found by the Trustee or the buyer, that those are
8 and preserved, number one, as non assets to the estate and
9 they are evidence in the litigation.

10 THE COURT: Ms. Oelsner, I thought I saw some language
11 the proposed sale order that dealt with your client's
12 Was I wrong?

13 MS. OELSNER: I haven't -- I didn't see that. I did
14 that the parties are -- that the buyer is required to protect
15 and keep the documents from the seller for seven years, books
16 and records for seven years.

17 THE COURT: I was looking at prior things this
18 I could have confused it. All right.

19 Well, let me ask this, Ms. Oeslner, what are you
20 for?

21 MS. OELSNER: Well, perhaps, your Honor, some
22 to the Trustee that they take some action to protect any of
23 evidence and our trade secrets. We don't want them
24 to a third party.

25 If the third party, the buyer obtains them, that they

1 can't be used, they can't be transmitted. They are not
2 and I don't think the Trustee actually intended to sell
3 something that they don't own.

4 THE COURT: Well, I guess there -- I am guessing that
5 there is a dispute as to what it is.

6 MS. OELSNER: We have been barred from doing any
7 discovery so we couldn't be more definitive in our limited
8 objection.

9 THE COURT: All right.

10 MR. LAPPING: Your Honor, we don't have any budget to
11 undertake some sort of search and rescue mission for whatever
12 data. We don't know what we are looking for, we don't know
13 where it would be, and I don't think there is any overt
14 to sell something that, you know, has been allegedly secret
15 somehow. I'm just not sure that there is a real denoting
16 whatever concern this is other than what might exist under
17 that may or may not be applicable to this situation.

18 THE COURT: All right:

19 MR. BERRYMAN: Albert Berryman on behalf of the buyer.

20 We heard about this by communication between counsel
21 Morning Star and Mr. Gordon about five days ago, I think, and
22 that is all that we know, and we don't know anything about
23 evidentiary basis for this or anything.

24 THE COURT: My perception here -- my comment is that
25 Ms. Oelsner wants to put the parties on notice. That

1 been given and the parties are proceeding accordingly;
2 that they are -- I don't think there is anything in the
3 order that is going to carve out a specific piece of
4 as that is an unknown. So the sale will proceed with that
5 notice being provided.

6 MR. OELSNER: Your Honor, I think that is a fair
7 representation.

8 THE COURT: All right.

9 MR. LAPPING: Well, that, your Honor, I believe -- I
10 think -- I believe that covers all of the objections that
11 aware of.

12 THE COURT: All right. Let me ask, does anyone object
13 the sale or to the assumption and assignment of contracts
14 than as has been outlined by Mr. Lapping? All right.
15 no one. We will proceed with the objections having been
16 resolved.

17 MR. LAPPING: Your Honor, in the process of finalizing
18 the documentation we came up with some additional contracts
19 got added to the final version of the asset purchase
20 and my associate, Mr. Colabianchi, will describe the
21 and the process that we have undertaken.

22 THE COURT: Was that the purpose of motion control
23 RL-23, in essence?

24 MR. COLABIANCHI: That's correct, your Honor.

25 THE COURT: All right.

1 MR. COLABIANCHI: Marcus Colabianchi on behalf of the
2 Trustee.

3 Your Honor, Exhibit A to document control number RL-23
4 a comprehensive list of the documents or the agreements, I
5 should say, that the Trustee sought to assume and assign. It
6 on the asset purchase agreement pared down list of the
7 agreements that the Trustee seeks to assume and assign.

8 There were three contracts in particular that were
9 after we filed the assumption motion, and those agreements
10 are -- the counter parties are Len K Hart, [ph.], Van
11 Glenn/Colusa Irrigation District. They all pertain to
12 agreements. Yesterday we reached a stipulation with all
13 counter parties. They support the assumption of the
14 so those issues are resolved.

15 THE COURT: All right.

16 MR. LAPPING: Your Honor, if I could I would like to
17 proceed with the description of the due diligence and exigent
18 circumstances by offer of proof.

19 THE COURT: All right. You may.

20 MR. LAPPING: We have in the courtroom today Mr. Glen
21 Clark who is a Managing Director of Duff and Phelps, and with
22 him is Leslie Nolan, [ph.], who is a Vice President of Duff
23 Phelps. Both Mr. Clark and Ms. Nolan were instrumental on
24 behalf of the parties to get a sale put together. I know
25 they were engaged initially on March 23rd of 2009 and

1 from the beginning that the ability to sell this plant --
2 that this plant had to be sold, these plants had to be sold
3 by the time that the tomatoes became ready to process, and
4 essentially -- we have been granted a little bit of a break
5 from good weather, but essentially everybody had July 1 as
6 date.

7 I think that both Mr. Clark and Ms. Nolan would
8 that time was of the essence and that they engaged in a
9 comprehensive and detailed listing of possible parties who
10 might be in a position in the industry to make a purchase of
11 this nature and of this magnitude. After the list was
12 with senior management at both the banks and with the
13 a list of some 47 companies were contacted for the sale. Of
14 these, some 42 expressed interest in possibly doing a
15 and ultimately 33 of these entities signed confidentiality
16 non disclosure agreements that enabled them to delve down and
17 take part in a review of the data room.

18 In addition, a data room was organized and created.
19 is a web-based facility in which all of the critical
20 that were either decided to be relevant or requested by
21 were placed and available for notice and view by potential
22 purchasers.

23 The site visits were conducted, meaning that 10 of
24 entities came out and visited the Williams and the Lemoore
25 sites, walked the facilities and were able to kick the tires,

1 figuratively, understanding what the nature of the process
2 going to be.

3 Finally we got down to the point where we had two
4 who had expressed a strong interest and submitted bids.
5 them was West Cal which was a newly organized entity that was
6 interested in purchasing the Lemoore facility only but was
7 unable to obtain financing for post-closing operations in
8 for the auction. The second of course is Olam which was the
9 winning bidder.

10 We would submit that on the basis of these efforts by
11 these professionals who are experts in the food industry
12 the process of mergers and acquisitions of food companies,
13 the efforts comprised adequate exposure of these assets to
14 market, and that we have obtained solid evidence that we have
15 the best possible price under the circumstances.

16 THE COURT: All right. Does anyone object to taking
17 those statements by way of offer of proof? There is no one.
18 They will be admitted.

19 MR. LAPPING: Thank you, your Honor. I also am aware
20 that in our proposed orders there is a request for a
21 good faith, and I believe your Honor has seen --

22 THE COURT: The declaration of Stephen --

23 MR. LAPPING: That's correct.

24 THE COURT: Stephen -- is it Stephen Smith?

25 MR. LAPPING: Stephen B. Smith, who is with us in the

1 courtroom today, has submitted a declaration in that regard.

2 THE COURT: I am prepared -- is there anyone
3 finding of a good faith purchaser?

4 I am prepared to make that finding based on the record
5 and declaration of Mr. Smith.

6 MR. LAPPING: Thank you, your Honor.

7 Finally we come to the orders -- the proposed orders.
8 We have with us a number of red line copies and I think -- I
9 believe these are red lined against the last proposed orders
10 that were submitted with the -- well, previously submitted in
11 the record.

12 THE COURT: Mr. Lapping, let me ask, I mean one of the
13 things -- I have reviewed the proposed order. I was given it
14 this morning and I looked at it briefly. One of the things
15 jumped out at me is this motion, the order is pursuant to
16 RAL-21, and that was the motion that approved the bid
17 procedures; correct? I think that is what we --

18 MR. LAPPING: Yes, your Honor, that's right. We are
19 going to change that from 22 to 21.

20 THE COURT: And the sale -- the 363(b) sale, and there
21 language in the proposed order that has this blanket 363(b)
22 language that I'm not comfortable with.

23 MR. LAPPING: Well, your Honor, you mentioned that
24 last hearing, and we then sent out a revised notice of the
25 to add all of those provisions so that there was no question

1 that --

2 THE COURT: But I mean a 363 sale, a 363(b) and a 363
3 sale, if there is a particular lien or interest that is
4 to having the assets be sold free and clear under one of the
5 enumerated items of the 363(f), I'm willing to consider that.
6 You can point me to the record. But this blanket language, I
7 mean I have seen those orders before and the Court isn't --
8 not a title company, if you will.

9 Where I am going with this is even -- the language in
10 the order is that anybody that received notice under
11 Rule 2002, the assets are being sold free and clear of their
12 lien on interest. If there is a particular lien or interest
13 that the assets are being sold free and clear of, I need to
14 that identified. Service needs to be filed under Bankruptcy
15 Rule 7004 as they have a material interest in the
16 It's separate and apart from the notice requirement from a
17 363(b) sale. Do you follow me?

18 MR. LAPPING: Well, I think I do, your Honor. I mean
19 there are a number of -- I mean all of the PACA leases, for
20 example, were selling free and clear of packing liens. We
21 resolving them by essentially paying them off. We are
22 free and clear of Chase liens. We are selling free and clear
23 the R.F. MacDonald liens.

24 THE COURT: All right. Those are all by consent;
25 correct?

1 MR. LAPPING: They are by consent, your Honor, and
2 is part of 363(f).

3 THE COURT: And I go back to what I just said, that
4 particularly identified liens or interest that the assets are
5 being sold free and clear of, and if you can point me to
6 the enumerated provisions under 363(f) such as consent, I am
7 prepared to do that. But it's the broad, all-encompassing
8 language that I am not comfortable with.

9 MR. LAPPING: Well, your Honor, we believe that we
10 the consent of all of those parties.

11 THE COURT: The parties that you just identified?

12 MR. LAPPING: And possibly others because we have
13 received no objections, and I think the buyer -- the buyer's
14 expectations, and I will let them address this, is that there
15 you know, the idea was to provide broad notice so that if
16 anybody asserted a particular interest or lien --

17 THE COURT: Well, two things --

18 MR. LAPPING: -- that they could come forward.

19 THE COURT: Two things. Motion control number RAL-21
20 did not, to my recollection, talk about this all-encompassing
21 lien-free sale language. The first time I saw it was in
22 control number 22 and that was -- there was an order denying
23 that motion being brought on shortened time.

24 MR. LAPPING: Well, your Honor, I understood you were
25 denying the motion for shortening time. I was not under -- I

1 did not realize you were --

2 THE COURT: Well, then, the motion is not before me
3 today.

4 MR. LAPPING: Well, I thought we -- we scheduled it
5 subject to providing notice, and which we did provide
6 all 3,500. We blanketed -- all creditors received notice of
7 both motions.

8 THE COURT: Well, let me hear from the buyers. I will
9 share with you this has surfaced before. Mr. Levinson, this
10 can't come as a surprise to you. The same issue came up in
11 another case where if there is -- for a court to make a
12 lien-free sale, in my opinion it needs to specifically
13 a provision under 363(f) and their needs to be evidence
14 And if you are doing a sale free and clear of a lien, it's an
15 adversary proceeding as to that particular creditor's
16 and notice needs to be provided by 7004.

17 It's different if you are just giving notice of a
18 which you need to comply with 2002, but I will be surprised
19 this comes as news to anyone today that this has not been
20 pitched up, in my eyes, as some type of blanket wholesale
21 lien-free sale motion.

22 MR. BERRYMAN: Your Honor, Albert Berryman on behalf
23 the buyer.

24 This element of the sale of these assets is critical
25 the buyer, and we added the APA agreement Section 5.8.2 that

1 the seller would obtain an order from the Court that these
2 assets are being acquired free and clear of any liens or
3 interest of any party and --

4 THE COURT: Where does the Court get the authority for
5 that if you haven't identified -- I mean just from a due
6 standpoint if a lien is not identified?

7 MR. BERRYMAN: Well, if there is some unknown lien
8 out there who did not get notice of this, I don't think we
9 say that they would be effected, but there was notice given
10 literally every creditor in this case that this agreement was
11 going to be submitted and a sale order was going to be
12 that would provide for the transfer of these assets free and
13 clear of all liens and interest, and this was a very
14 element, is a very important element to Olam.

15 MR. LAPPING: Could I have one moment, your Honor?

16 THE COURT: You may.

17 ---oOo---

18 [Discussion off the record.]

19 ---oOo---

20 MR. LAPPING: Your Honor, I think the process that we
21 have engaged in has yielded a couple of things. One, we did
22 identify a number of parties who stepped forward and
23 and we have resolved their objections, and they have leins
24 they have essentially consented.

25 THE COURT: Then I am comfortable.

1 MR. LAPPING: We are fine. And then after that, I
2 the Court's position is reconcilable with the provisions of
3 agreements specifically in Section 5.8.1.

4 THE COURT: This is the asset purchase agreement?

5 MR. LAPPING: This is of the asset purchase agreement
6 which 5.8.1 is under a general section called Bankruptcy
7 Approval. The specific approval that we are seeking is in a
8 paragraph in the middle of that on the next page 17. If
9 scanning it, it's down in the middle. The sentence begins
10 the words, "The sale order contemplated hereby --

11 THE COURT: I have it highlighted. "The sale order
12 contemplated --

13 MR. LAPPING: It says "to the fullest extent allowable
14 under the Bankruptcy Code." So it's not beyond any -- you
15 this isn't -- if for some reason there is an unknown, you
16 somebody has asserted a lien or an unexpired security
17 or, you know, something that somehow didn't get addressed,
18 either it's allowed by the Bankruptcy Code or it isn't.
19 think, you know, what the Court is raising is probably
20 consistent with the language of the contract.

21 MR. BERRYMAN: Your Honor, Albert Berryman for the

22 I believe the Court has jurisdiction to obviously
23 the lien holders who are hereby consented and any other party
24 who would claim a lien who received notice of this sale
25 that their liens would be avoided --

1 THE COURT: Well, what is it --

2 MR. BERRYMAN: -- if they did not object.

3 THE COURT: If there is a lien-free sale of an
4 of a creditor, what is the proper mode of service?

5 MR. BERRYMAN: I believe that the sale notice under
6 Rule 2002 would be appropriate. Any party who received
7 of this sale motion and did not object can be bound.

8 THE COURT: All right. Let's move on. I understand
9 issue. Whether I agree is another question.

10 MR. LAPPING: Well, your Honor, in light of that,
11 we should indicate that the motion to approve the sale goes
12 forward under docket control number 21 and 22 because it
13 understanding that in response to the Court's concerns that
14 went out and renoticed motion number 22 so that we added
15 these additional parties.

16 THE COURT: Well, let me share with you, I was
17 see how things were lining up, and inconsistent with that
18 statement is that when I denied the order shortening time
19 motion to assume the contract, that was renewed. That
20 application for order shortening time was renewed. I
21 it and I granted that order shortening time. I do not recall
22 subsequent request for an order shortening time on motion
23 control number RAL-23.

24 MR. LAPPING: That's correct, and that is because we
25 understood that the Court had set -- you know, our initial

1 to shorten time was for last Friday,

2 THE COURT: And I denied both of those.

3 MR. LAPPING: Right, and we had understood that.

4 only thing we talked about at this hearing was the sale

5 We didn't bring up the executory contract motion. We then

6 reset -- with the Court's direction we continued that hearing

7 today's hearing, Thursday, June 25th, and as a result it

8 calendar we believe based on the Court's direction. What

9 failed to do was address with anybody the motion to assume

10 contracts, which is why we only submitted one request for an

11 order shortening time. It was our understanding that --

12 THE COURT: All right.

13 MR. LAPPING: -- in both cases that we can go to

14 notice.

15 THE COURT: I understand the lay of the land.

16 MR. LAPPING: Okay. I guess, your Honor, we can go

17 through the two orders, and I don't know, would you prefer

18 you ask me questions on the changes or --

19 THE COURT: Well, I know that -- let's go ahead on --

20 MR. LAPPING: Well, okay.

21 THE COURT: -- the sale order.

22 MR. LAPPING: The sale order. I am taking the sale

23 first. Obviously we are adding the name of the purchaser.

24 are filling out the definition of creditors and interested

25 parties. We are indicating specifically that there was a

1 bidding, an auction at our offices yesterday, June 24th.

2 is in paragraph 8.

3 In paragraph 9 we have filled out the concept of
4 due diligence and the exigent circumstances.

5 On paragraph 11 a finding that -- or an order to the
6 affect that the sale outside of a plan of reorganization is
7 called for here.

8 New paragraph 13. This is the modification that --
9 minor modification provision for the APA.

10 Paragraph 16 is new. Again, this is I think answered
11 the offer of proof. It has to do with the consideration
12 adequate.

13 Paragraph 17 is simply a build-out on the notion
14 Chapter 11 Trustee has full authority.

15 Those were all findings. I apologize, I think I said
16 order, but findings.

17 Then new paragraph 24. This is a reference to not
18 assuming successor liability, which I believe is consistent
19 California law that so long as a party does not assume
20 liabilities, they are not being assumed.

21 Paragraph 27 is a waiver of the ten-day stay under
22 Bankruptcy 6004(h), 6006(d). I should add, however, that
23 notwithstanding that, it is a condition of the closing that
24 order become final, i.e., the ten-day --

25 THE COURT: Right.

1 MR. LAPPING: -- appeal period have lapsed. I don't
2 to create the impression that our timing has somehow changed.

3 Paragraph 28 I think is again an authority point and
4 that there will not be later, you know, later efforts to
5 the agreement.

6 Paragraph 29 is again a build-out of the notion
7 are authorized or the Trustee, rather, is authorized to
8 documents.

9 Paragraph 31 are changes, potential changes in the
10 timing if the parties so agree.

11 And paragraph 32 I think is an explanation or an
12 abundance of caution type of provision related to excluded
13 assets.

14 THE COURT: Well, this is what I am inclined to do: I
15 want to look at that issue. I am inclined to take a recess
16 resume at 1:00 o'clock. I want to take a look at a couple of
17 issues on the lien sale assets.

18 MR. LAPPING: That's fine, your Honor.

19 THE COURT: All right.

20 MR. LAPPING: And then paragraph 33 is a recital that
21 will help us in connection with --

22 THE COURT: The rest of it I am satisfied with. I
23 reviewed it. But that is something that I want to take a
24 at, so let me do that, and we will resume at 1:00 o'clock.

25 MR. LAPPING: Do you want me to address the assignment

1 order at all?

2 THE COURT: I have taken a look at that and that I
3 have a problem with.

4 MR. LAPPING: Okay. We will change the number of
5 your Honor.

6 THE COURT: Very well. All right. We will resume at
7 1:00 o'clock.

8 MR. LAPPING: Thank you, your Honor.

9 MR. BERRYMAN: Thank you, your Honor.

10 ---oOo---

11 [Lunch recess.]

12 ---oOo---

13 THE COURT: Good afternoon and please be seated.

14 Mr. Lapping, we were engaged in a discussion of the
15 status of sale and whether it's free and clear of all liens
16 claims or not.

17 MR. LAPPING: Yes, your Honor. Our thoughts after
18 Honor's comments are a couple: One is that we did go out on
19 notice of the sale being free and clear to a large population
20 creditors and parties in interest that we could identify
21 on as many names as we could pull together from the
22 and I do know that we got a lot of calls from former
23 used to have some sort of relationship and it was expired and
24 longer had a relationship. So we believe it was pretty

25 We think that there are two ways to look at it, both

1 which would lead to the approval of the order as written.
2 is that the order really only binds the parties who got
3 and so, you know, if a party in interest had a claim that we
4 didn't identify for some reason as being a particular
5 that they had notice. So to the extent that a party has an
6 interest or secret lien that we didn't give notice to, then
7 there is an argument that they might have the ability to
8 that down the road.

9 However, I would add yet another point of view and
10 is the point of the view of the secured lenders in this case,
11 and that is that if they were conducting a foreclosure sale
12 selling all of these assets pursuant to an Article 9
13 which this is very analogous to, they have now given notice
14 only to all contractors on that list but they have given
15 publication very broadly in the USA Today I think as well
16 the Fresno Bee and the Sacramento Bee.

17 So you know, we believe that the notice and due
18 rights of all parties have been carefully observed. Indeed
19 final step we gave notice to the 3,500 plus creditors on the
20 list six days ago, six days before this hearing, which is not
21 lot but in the scope of this particular hearing and given the
22 number of parties who have shown up, we think that, you know,
23 have given a lot of good notice.

24 THE COURT: Mr. Lapping, did that mass mail out
25 this most recent motion along with the notice?

1 MR. LAPPING: The motion itself?

2 THE COURT: Yes.

3 MR. LAPPING: No, your Honor. It gave a three-page
4 description, I believe, of the notice including recitation of
5 all of the --

6 THE COURT: I thought I saw on the proof of service
7 the motion itself was filed -- excuse me -- was served.

8 MR. LAPPING: We may have served that on a different
9 list, your Honor. I am fairly confident we didn't serve the
10 entire motion on the 3,500 broader creditor list.

11 MR. COLABIANCHI: Your Honor, Marcus Colabianchi on
12 behalf of the Trustee.

13 THE COURT: I am looking at a proof of service that
14 served June 17th and it's 20 pages.

15 MR. COLABIANCHI: That's right, your Honor, we did
16 provide -- we did serve not only the OSC application but the
17 underlying motion, the sale motion or Rule 22 on all the --

18 THE COURT: The ones that are limited to the special
19 notice request or was that served on everyone?

20 MR. COLABIANCHI: That was served on a total of 520
21 parties, your Honor, by U.S. Mail first class.

22 THE COURT: And where is the notice that was served on
23 everyone? I am looking at docket control number 22.

24 MR. COLABIANCHI: That I believe, your Honor, is
25 number 383, and it relates to the notice -- the amended

1 of auction and sale, and that is docket number 381.

2 THE COURT: Well, see, that doesn't --

3 MR. COLABIANCHI: And in that amended -- in that
4 notice, your Honor, we did specify on page 2 of the sale
5 and I quote, "The statutory basis for the sale and the sale
6 motion is 11 USC Section 363, including but not limited to
7 following subsections: (b), (d), (f), (h), (i), (j), (k),
8 and (m)."

9 THE COURT: But it doesn't say that you are selling it
10 free and clear of everyone's interest. It just references
11 code sections. Well, hold on. Let me take a look at this.

12 Is there anywhere in this notice that says you are
13 selling the assets free and clear of the liens?

14 MR. LAPPING: We are not finding it, your Honor, as
15 You know, there is a bold --

16 THE COURT: Let me share with you, when I took the
17 I was trying to come up with a solution to an issue here, and
18 mean there is two things that I was concerned about. One
19 Court making a finding under 363(f) to sell free and clear of
20 liens, and my thought was you could by way of offer of
21 have the Trustee come up and say other than the creditors
22 have consented to the sale, any other third party, and the
23 secured lender, any other third party that received notice of
24 this lien-free sale, if they are claiming a lien, it's in
25 dispute. Do you understand? That would then give the

1 least a basis for finding to the extent there is any other
2 out there that is in dispute.

3 As far as notice, I still am of the opinion that if
4 are going to do a lien-free sale, that it's prudent to do so
5 under Bankruptcy Rule 7004. Under the circumstances of this
6 case, I feel I can -- to the extent creditors have received
7 notice of a lien-free sale, I can approve it with the 2002
8 notice given under limited -- you know, this is not the
9 general position but under these circumstances, I can. But
10 I don't see anywhere in this notice that it says this is
11 to be a lien-free sale.

12 MR. LAPPING: Well, your Honor, it does so only by
13 inference.

14 THE COURT: All right. Well, let me ask Mr. Gordon --
15 Mr. Berryman, I mean. I am trying to get from point A to
16 point B. I will note that some 500 creditors received the
17 motion. It does indicate a lien-free sale, and I am prepared
18 the Trustee puts on evidence that to the extent any of those
19 creditors assert an interest, a lien in the property, it's
20 disputed free and clear of those liens.

21 My comment is I am sure your clients have done the
22 requisite due diligence, and this is a sale that any claim
23 pop up in that due diligence period. But you know, for some
24 other creditors of the estate that really haven't been
25 that this is a lien-free sale, I am not prepared just to

1 randomly put that in the order.

2 MR. BERRYMAN: Your Honor, I don't have any resolution
3 other than to suggest that any creditor who did receive
4 and did not object to a lien-free sale is going to be bound
5 the order.

6 THE COURT: I'm saying that I think -- I mean, again,
7 it's not an ideal situation, but I think that what we could
8 today based on one, the Trustee offering testimony to the
9 other than the creditors that have consented, if anyone else
10 that has received notice of the lien-free sale asserted a
11 it would be in dispute, is not aware of any other liens that
12 they have, and the ones that have received the motion and the
13 notice, it does in those documents explain that it's a lien-
14 sale.

15 But this notice that went out to the general matrix, I
16 don't see language in there that indicates a lien-free sale.

17 MR. BERRYMAN: Your Honor, I don't know about -- I
18 understand this was an amended notice, and if there was a
19 previous notice that was served on the greater creditor body,
20 can we deem that this amended notice just simply
21 hearing?

22 THE COURT: That initial notice -- you can correct
23 I am wrong, but that initially notice was silent in regards
24 any lien-free sale.

25 MR. LAPPING: I believe your Honor pointed out that

1 was no reference to 363(f), and from memory I believe that
2 is correct. The Trustee could indeed testify that we have
3 a comprehensive listing of what we believed were the parties
4 with interests; and that indeed if anyone stepped forward at
5 this point, that that would be a disputed interest.

6 MR. BERRYMAN: Your Honor, if I could have about five
7 minutes to confer with our clients?

8 THE COURT: That would be fine. Do you want to take a
9 brief recess?

10 MR. BERRYMAN: Please.

11 THE COURT: Is five minutes a sufficient amount of

12 MR. BERRYMAN: Your Honor, I would ask for ten.

13 THE COURT: Very well. Just let the Deputy Court
14 know when you are ready to go forward.

15 ---oOo---

16 [Brief recess.]

17 ---oOo---

18 THE COURT: Please remain seated. All right.
19 Mr. Lapping?

20 MR. LAPPING: Your Honor, counsel with sharper eyes
21 mine have looked at this order again -- I'm sorry -- at the
22 amended notice and have drawn our attention there to a
23 that has the reference to Section 363, and then one, two,
24 the fourth paragraph after that begins with all bold --

25 THE COURT: Correct.

1 MR. LAPPING: -- and ends with the phrase, "--
2 the transfer of the property free and clear of interests and
3 encumbrances." And this is going out to 3,800 parties that
4 been identified as having potential interests in or potential
5 claims.

6 THE COURT: Well, I will comment that the eyes that
7 looked at this are better than yours and mine because I did
8 see it either.

9 MR. LAPPING: Actually, your Honor, I remember
10 it now, and my memberly is short as well.

11 THE COURT: All right. I have looked at the language.
12 That notice did go out to all creditors listed on the matrix.
13 It is close to the language that I was looking for, not
14 reference to a number of code sections.

15 I am prepared to have you proceed either by way of
16 of proof or put the Trustee on, but what I think is
17 is evidence to the extent any other claim holder or creditor
18 other than those that are consenting to the sale and liens
19 by the bank consenting to the sale, that any other claim
20 the assets would be in dispute.

21 MR. LAPPING: Your Honor, I think I would offer that
22 could put on evidence if not directly from the Trustee, from
23 others in the courtroom, including the Duff Phelps people who
24 helped set up the data room, that there was a comprehensive
25 listing of everybody who had ever filed a UCC claim, who had

1 ever showed up on any of the title records that related to
2 of the real property, there was a comprehensive effort to
3 identify creditors and any party --

4 THE COURT: And I am assuming that. Although it's not
5 stated here, but I think the presumption here is that the
6 body of creditors that simply received this notice, you are
7 aware of any claim that they have, any secured claim that
8 have?

9 MR. LAPPING: That's correct, your Honor.

10 THE COURT: And accordingly it would be disputed is
11 I would expect the position to be.

12 MR. LAPPING: Your Honor, the Trustee is over there
13 nodding in agreement to your statement.

14 THE COURT: Well, again, unless someone wants to
15 it will be done by offer of proof. If you want to put Mr.
16 up, have him sworn in and solicit that testimony. I'm
17 leave that up to you.

18 MR. LAPPING: I would go by offer of proof, your

19 THE COURT: All right. Does anyone object to the
20 by way of offer of proof in so much as advising or indicating
21 that any creditor that has not consented to the sale, that
22 lien that would be asserted by those third parties is in
23 dispute?

24 MR. BERRYMAN: No objection by Olam, your Honor.

25 THE COURT: All right. By the silence I am assuming

1 may proceed by offer of proof.

2 MR. LAPPING: Thank you, your Honor. Beyond that,
3 are some clean-up items that we --

4 THE COURT: I think you will need to present --

5 MR. LAPPING: Oh, your Honor, I do make this offer of
6 proof: That anybody who would at this point show up and
7 any kind of an interest or a lien on the property, that the
8 Trustee would assert and take the position that that lien was
9 disputed.

10 THE COURT: Other than those consenting to the sale?

11 MR. LAPPING: Other than those consenting to the sale.

12 THE COURT: All right. It is accepted and admitted.

13 MR. LAPPING: Thank you, your Honor.

14 THE COURT: All right.

15 MR. LAPPING: Counsel for the California Tomato
16 Association has pointed out that in our order assigning
17 executory contracts that we are purporting to assign expired
18 leases. I'm sure we meant to say unexpired leases, and we
19 correct that.

20 Counsel for the Salyer entities, Mr. Pascuzzi, has
21 approached the parties in interest and has requested that the
22 order contain a provision to the effect or the following
23 provision which everybody, I understand, is in agreement

24 "The Court reserves jurisdiction to
25 resolve any dispute between the Trustee,

1 the buyer, and any other party in
2 interest over whether certain vehicles
3 and bins listed on Exhibit 1.6 to the
4 purchase agreements are property of the
5 debtors, and this sale order does not
6 authorize the sale of any property that
7 is not property of the debtors."

8 THE COURT: All right.

9 MR. LAPPING: I understand that Odenberg Leasing may
10 amend the contract or lease numbers applicable to their
11 contracts or leases.

12 MS. PARKINSON: That's correct.

13 MR. LAPPING: Okay. And we'll have that amendment.

14 I think beyond that we just need to confirm that the
15 order as amended both on the record here today and in the red
16 line version submitted to the Court and to the parties
17 with the terms of the APA in the view of the buyer.

18 MR. BERRYMAN: Agreed, your Honor.

19 THE COURT: All right.

20 MR. LAPPING: Your Honor, I think that is all that we
21 had. If the Court is inclined to approve these orders, then,
22 amended --

23 MR. FREDERICKS: Your Honor, John Fredericks of
24 and Strawn on behalf of the Trustee.

25 One other comment on the order. I think we have

1 raised this so it's more by way of clarification, but Chase
2 Equipment Finance has, as we have discussed earlier,
3 that we attach the agreement between the Trustee, the
4 banks and Chase to the order, and we will be making a
5 other revisions to the order that clarify that the Trustee
6 be performing in accordance with the agreement that is being
7 attached.

8 THE COURT: All right.

9 MR. McQUAID: Your Honor, Michael McQuaid on behalf of
10 R.F. MacDonald.

11 Earlier Mr. Lapping recited that the stipulation had
12 reached with MacDonald, and I just wanted to make sure that
13 stipulated cure amount of \$196,135 and the stipulation of
14 will be paid on or before closing is included in the order.

15 MR. LAPPING: Your Honor, we have a provision in there
16 that all funds that are to be paid at close, that we actually
17 have a 15 day window to effectuate that. They are being paid
18 out of an escrow, and we want to make sure that we don't --
19 we leave ourselves a little bit of room in the event that
20 payment is somehow overlooked but that was intended to be
21 Our intent is to pay everything at closing out of escrow.
22 you know, we built in some space for errors and effectuating
23 that.

24 THE COURT: All right.

25 MR. GINTER: Dale Ginter on behalf of the Committee.

1 At paragraph 28, the last sentence of the order, I
2 with Mr. Spiotto earlier, that purports to cut off any rights
3 challenge the bank's claim in the final cash collateral
4 The Committee has for a period of time preserved its right to
5 challenge the bank's unsecured claim, and we are going to
6 that sentence to provide that subject to the final cash
7 collateral order, and the purpose of that is to resolve any
8 conflicts between the two and to preserve the Committee's
9 as contained in the final cash collateral order.

10 MR. BERRYMAN: Your Honor, we found a two-word
11 that we think would clarify something. In paragraph 32 of
12 red line order at line 24 on page 8, the term "excluded
13 is included in that paragraph. I think that it should add
14 two words "as defined" between the word "assets" capitalized,
15 and the phrase "in the purchase agreement" because I don't
16 there is any reference in this order to capital terms
17 same meaning that they have in the asset agreement, but I
18 believe that is the intent of this provision. The excluded
19 assets as defined in the APA are not being transferred.

20 THE COURT: Correct.

21 MR. BERRYMAN: But the term excluded assets is not
22 defined anywhere else in the order.

23 MR. LAPPING: Let me confer, your Honor.

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[Discussion off the record.]

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MR. LAPPING: Okay. We have that change, your Honor.
think we are submitting, your Honor.

THE COURT: All right. It seems to me that the
thing to do, there is going -- I am going to put some
and conclusions on the record.

What is the contemplated process for circulating an
and then submitting it to the Court?

MR. LAPPING: Your Honor, we plan to try to get
signatures from the Creditor's Committee. We will be at
offices revising the order, the banks. Who else? Chase, and
the buyer and Odenberg.

THE COURT: All right. Does anyone else wish to
on the form of the order?

MR. McQUAID: Your Honor, Mike McQuaid.
As long as the stipulation that was announced on the
record is contained in the order, I don't need to sign off on
it.

MR. LAPPING: It is, your Honor.

THE COURT: Well, then, all right. So we won't put
Mr. McQuaid on there as required to sign off.

MR. WISOTZKEY: Sam Wisotzkey on behalf of General
I think we should sign off on the assignment order as

1 well.

2 MR. LAPPING: That is fine with us.

3 THE COURT: Well, one of the things that can be done
4 we can continue the hearing to tomorrow at 10:00 and you can
5 present the order at that time.

6 MR. LAPPING: Your Honor, I would love to do that
7 that counsel -- I think we would like to get -- we are on a
8 tight schedule. If we can get this order entered today,
9 to you and entered today, we could put the schedule on the
10 footing it needs to because there are -- you know, after the
11 order is entered and we have now commenced the process to
12 there are a ton of things that need to be done, things that
13 to be bought and applied to the process to get going.

14 THE COURT: Well, are you going to get the sufficient
15 parties to sign off on the orders to have it filed today?

16 MR. LAPPING: Yes, your Honor, I am confident that we
17 will get everybody to sign off on it before we send it to

18 THE COURT: All right.

19 MR. PASCUZZI: Your Honor, Paul Pascuzzi.

20 I don't need to sign off on the order. I just would
21 it circulated to us so that I can look at it.

22 MR. LAPPING: Your Honor, we will get a signature from
23 Mr. Pascuzzi as well.

24 THE COURT: All right. Let's then specifically again
25 identify who is it that is going to --

1 Nancy, do we have the parties who are going to sign
2 on the order?

3 THE CLERK: If they could repeat who they are.

4 THE COURT: Those parties who are going to sign off on
5 the order?

6 MR. LAPPING: They are the buyer --

7 THE CLERK: Names, please.

8 MR. LAPPING: Oh, sorry. You mean --

9 THE CLERK: Yes, who is going to be signing off.

10 MR. BERRYMAN: Albert Berryman, Baker, Manock and
11 for Olam West Coast, Inc., and Olam Tomato Processors.

12 MR. PASCUZZI: Paul Pascuzzi for the Salyer entities.

13 MR. GARDNER: Brent Gardner, Lewis and Roca, for

14 MR. GINTER: Dale Ginter, Downey Brand, for the
15 Committee.

16 MR. LEVINSON: Mark Levinson, Orick, Herring and
17 Sutcliffe for the secured lenders.

18 MS. PARKINSON: Donna Parkinson for Odenberg.

19 MR. WISOTZKEY: Samuel Wisotzkey, Kohner, Mann and
20 for General Mills.

21 MR. LAPPING: No one gets to leave, your Honor, until
22 they sign.

23 MR. BERRYMAN: Your Honor, I would like to amend ours.
24 Albert Berryman for Olam Entities, and if I am not
25 some reason, Mr. Gordon of the McDonough firm --

1 THE COURT: Either yourself or Mark Gordon?

2 MR. BERRYMAN: Correct. Thank you.

3 MR. LAPPING: That would be it, your Honor.

4 THE COURT: All right. And the timeline is -- when do
5 the parties expect to have it submitted?

6 MR. LAPPING: We think by 3:30.

7 THE COURT: Well, I'll tell you what, I mean I will be
8 checking and I mean it will in likelihood be signed within --
9 depends on when it's in but sometime within -- well, it
10 if it's lodged today it will be signed today. Let's put it
11 way.

12 MR. LAPPING: Thank you, your Honor. That is fairly
13 important for the schedule, and we appreciate your
14 us.

15 The last thing that we had on the agenda, I
16 is the West Lake Farms motion for an order to compel
17 or rejection, and I believe that is mute given that their
18 contract will be assumed.

19 THE COURT: All right.

20 MR. ROLDAN: Your Honor, Vincent Roldan, DLA Piper,
21 counsel to West Lake on the phone.

22 That's correct, your Honor. It sounds like our motion
23 compel is muted by the sale motions and assumption
24 will withdraw our motion to compel without prejudice.

25 THE COURT: All right. So calendar items 4 and

1 item 3, those motions are withdrawn by the moving party.

2 All right. So the compromise motion has been
3 the sale motion and the assumption motion have been approved,
4 and again just so that there is clarity, the sale motion is
5 approved under motion control number RAL-21, and that was the
6 amended notice that went out under that motion number; is
7 correct?

8 MR. LAPPING: Let me look. Yes, your Honor, it looks
9 like it went out under 21 as you said.

10 THE COURT: I think what happened is motion control
11 number 22 was not on calendar today. I mean the way that I
12 summing it up is that you went back and did an amended notice
13 motion control number 21, and that's -- the certificate or
14 notice of filing of the amended notice was filed on June
15 but that is the amended notice that you were talking about
16 before; correct?

17 MR. LAPPING: Yes, it is, your Honor. We are estopped
18 from saying anything else. We have said 21 and that is
19 is.

20 THE COURT: All right. I do think it appropriate just
21 under the circumstances to put some findings and
22 the record. These will apply equally to the motion to
23 the compromise which I have already partially indicated. The
24 compromise was a lynchpin to the sale, and also to the sale
25 motion RAL-21 and to the motion to assume the contracts,

1 executory contracts which is RAL-23.

2 The Court's findings and conclusions are as follows:

3 S and K Foods, LP, separately it may be referred to as
4 SK Foods and RHM Industrial Specialty Foods, Inc., which
5 separately referred to as RHM, each filed separate voluntary
6 Chapter 11 proceedings on May 7th, 2009. SK Foods and RHM
7 be collectively referred to as "debtors".

8 Involuntary petitions were filed against the debtors
9 May 5th, 2009, two days prior to the voluntary petitions.
10 voluntary and involuntary petitions have been consolidated
11 pursuant to Bankruptcy Rule 1015.

12 At all times relevant the debtors have been engaged in
13 processing and packaging tomatoes and other perishable
14 agricultural products at two processing plants located in
15 Northern California.

16 The debtors' corporate headquarters are maintained in
17 Monterey, California.

18 At the time the debtor filed the respective Chapter 11
19 cases each debtor filed a motion for appointment of a
20 Accordingly and without opposition Bradley Sharp was
21 as Chapter 11 Trustee in each of the debtors' cases on May
22 2009.

23 At this point in my findings and conclusions I may
24 "debtors" or "trustee" interchangeably, whichever is most
25 appropriate.

1 The Creditor Committee was appointed in this case on
2 May 19th, 2009, and has retained counsel, and the Committee
3 been active in this case since its appointment.

4 The debtors own two major processing and packaging
5 plants. SK Foods owns a plant in Lemoore, California, and
6 RHM owns a plant in Williams, California. Both plants were
7 are being operated by SK Foods.

8 As tomatoes are seasonal, the debtors business cycle
9 also seasonal. Each May and June the debtors expend
10 efforts to prepare for the upcoming tomato packing season.
11 tomato packing season begins on or about July 1 and typically
12 lasts through September. Based on the increased volume of
13 as well as the increase in temporary -- excuse me --
14 of temporary workers during this period, the debtors'
15 increase dramatically. As a result, debtors' ability to
16 during the packing season is dependent on the debtors having
17 financing available.

18 As of the petition date the debtors were obligated to
19 syndicate of lenders on a revolving credit line, a temporary
20 access loan and a term loan, and hereafter those parties or
21 those secured creditors will be referred to as the Salyer
22 Credit Lenders. The amount as of the petition date owing
23 Senior Credit Lenders is in excess of 192 million dollar.
24 senior credit lenders were secured -- were and are secured by
25 substantially all of the real and personal property assets of

1 the debtors.

2 Since filing, the debtors and the trustee have been
3 using the senior credit lenders' cash collateral pursuant
4 order of this court. In consideration for the use of cash
5 collateral, the secured -- the senior credit lenders have
6 granted a replacement lien on post-petition assets. The
7 trustee's authority to use cash collateral to operate the
8 businesses expires on June 28th, 2009.

9 The Trustee currently does not have the financing to
10 operations through the upcoming tomato packing season which
11 begins in less than a week from today.

12 At all relevant times the debtors' objectives in the
13 filing of this Chapter 11 case was to facilitate a sale of
14 businesses as a going concern prior to the July 1 tomato
15 season. To that end, the debtors obtained a crude bidding
16 procedure for an auction sale which was conducted yesterday,
17 June 24th, 2009. Pursuant to the bidding procedures order,
18 today's hearing was for the Trustee to obtain court
19 yesterday's sale to the successful bidder.

20 If the Court does not approve this sale, the Trustee
21 not be able to operate the business passed June 28th, and
22 will result in their closure and ultimately a piecemeal
23 liquidation of the estate's assets. Such a piecemeal
24 liquidation will result in significantly less return to
25 creditors in the estate and the estate, Section 363 of the

1 Bankruptcy Code allows in relevant part for a sale outside of
2 ordinary course. A sale under Section 363(b) of
3 all of the debtors' assets can be approved where the Court
4 exceptional circumstances. Specifically where a debtors'
5 are a going concern are in essence perishable or in eminent
6 danger that there will be a substantial depreciation or
7 deterioration in value absent the approval of a sale as
8 substantially all of the assets, the Court has the discretion
9 approve such a sale.

10 The Court finds that such cause exists today for
11 approving a sale of substantially all of the estate's assets
12 outside of a Chapter 11 plan. In so finding, the most
13 consideration to the Court is whether the assets are being --
14 whether the assets being sold are, in essence, perishable or
15 will decrease in value if the sale does not go forward. If
16 Court does not approve the sale, the Trustee will not have
17 financial ability to continue operation, as I have said,
18 June 28, which will result in the closure, substantial loss
19 employment, piecemeal liquidation and a dramatic depreciation
20 and deterioration in the value of the estate's assets.

21 As the assets have been sold in an auction setting
22 adequate advertisement, the Court finds the Trustee is
23 fair value for assets, and that the sale is in the best
24 of the creditors and the estates. Accordingly the sale is
25 approved under Section 363(b).

1 Turning now to sale of assets free and clear of
2 the Court finds that the sale motion sufficiently and
3 noticed parties for a sale free and clear of liens and
4 encumbrances of the parties receiving notice of this motion.
5 Ideally any party that asserts an interest in an asset that
6 to be sold free and clear of liens should be noticed pursuant
7 Bankruptcy Rule 7004. However, the Court does find that all
8 creditors did receive notice of the Trustee's intent to sell
9 assets free and clear of liens, and that such notice was
10 provided pursuant to Bankruptcy Rule 2002.

11 Specifically, the amended notice that Mr. Lapping
12 referred to and the language that he pointed out does comfort
13 the Court that all creditors listed on the general matrix of
14 this case were apprised that the sale was going to be free
15 clear of liens. The Court finds in this particular case that
16 notice given was reasonably calculated under the
17 to apprise interested parties of the Trustee's request to
18 assets free and clear of liens, and accordingly the notice is
19 sufficient.

20 I just look to In Re: Mulane versus Hanover Bank, 339
21 306. Also In Re: Espinosa, 545, Fed 3d, 1113.

22 The Court finds that the Trustee has offered evidence
23 way of offer of proof that any parties other than the parties
24 consenting to the sale free and clear of liens, that any
25 lien being asserted against those parties that have received

1 notice is in dispute and that the Trustee believes does not
2 exist.

3 Accordingly, the Court finds that the sale is free and
4 clear of liens pursuant to Section 3663(f)4 as to those
5 creditors that have not consented to the sale but have
6 notice; and that in regards to the secured creditors and
7 creditors that have consented to the sale, the sale is free
8 clear of liens and interests pursuant to Section 363(f)21.

9 All right. Mr. Lapping and Mr. Coleman, any
10 findings that the parties are requesting at this point?

11 MR. LAPPING: Not other than as stated in the written
12 formal order that we have submitted.

13 THE COURT: All right. Anything else, Mr. Coleman?

14 MR. COLEMAN: No, your Honor.

15 THE COURT: All right. Let me ask, do the parties
16 want -- I will look for the order to the Court. Do the
17 want to continue this hearing to a date in the future if
18 is a glitch? I mean if I sign the order, the hearing simply
19 will be removed from calendar.

20 MR. LAPPING: Your Honor, Richard Lapping.

21 Why don't we set something six days out.

22 THE COURT: Well, I was thinking either Friday or
23 so that if the parties can't agree upon something, it's going
24 to --

25 MR. LAPPING: That depends on what you mean by

1 your Honor.

2 THE COURT: Well, let me -- I understand it needs to
3 reviewed by a number of parties, and I was either going to
4 continue this hearing to 10:00 o'clock tomorrow or 10:00
5 on Monday so that if something happens and they need to, you
6 know, present their issue to the Court, that you have it on
7 calendar; and that if it is signed, it would just be removed.
8 That is up to the parties.

9 MR. LAPPING: Your Honor, 10:00 o'clock tomorrow would
10 ideal.

11 THE COURT: All right.

12 MR. BERRYMAN: That would be ideal for us as well,
13 Honor.

14 THE COURT: All right. I will then continue the
15 to 10:00 o'clock tomorrow. If the order -- and that is the
16 hearing -- I am going to continue both the sale hearing and
17 hearing on approval of compromise. If the sale motion is
18 before, then so be it. I'll simply conclude the hearing. If
19 not, I'll be here to address the issues if they arise. And
20 sign the sale order and no one is here for the motion on
21 approval of the compromise, I'll simply note that it's been
22 granted and the moving parties are to submit an order.
23 how it stands now.

24 MR. LAPPING: Thank you, your Honor.

25 THE COURT: All right. Any other order of business at

1 this point? All right.

2 MR. COLEMAN: I don't believe so.

3 THE COURT: All right. I know that it's been a
4 meritorious process. I know that people have worked hard,
5 commend people in as much progress as you have, and I say
6 luck to you all.

7 ---oOo---

8 [Whereupon proceedings concluded.]

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CERTIFICATE OF SHORTHAND REPORTER
STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, Patricia A. Hernandez, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the hearing in shorthand writing; and that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2009.

Patricia A. Hernandez
Certified Shorthand
License Number 6875

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\$	15th 10:24	25th 56:7
\$196,135 36:13,20	16 57:10	261 31:21
70:13	17 54:8 57:13	262-5739 4:6
\$5.3 19:21	17th 61:14	267 31:25
<hr/>	18th 2:23 5:8 77:21	27 57:21
0	1900 3:23	271 32:19
09-29161-D-11 1:8	192 78:23	273 32:20
09-29162-D-11 1:5	19th 78:2	28 58:3 71:1 80:18
<hr/>	<hr/>	284 32:25
1	2	288 33:6
1 2:5 47:5 78:11	2 28:23 62:4	28th 79:8,21
79:14	20 61:14	29 58:6
1.10 39:19	2002 50:11 52:18 55:6	290 33:6
1.3 17:9	63:7 81:10	292 33:10
1.5 30:7	2003 34:2	294 33:10
1.6 30:7 35:7 36:9,14	2006 41:25	296 33:10
69:3	2009 7:2 46:25	298 33:10
1:00 58:16,24 59:7	77:6,9,22 78:2	2-RHM 28:7
10 47:23	79:8,17 85:1	<hr/>
10,000 38:20	2050 2:17	3
10:00 7:6 22:17 26:10	20799 4:16	3 27:21 32:1 76:1
73:4 83:4,9,15	21 49:19 55:12	3,500 52:6 60:19
10020-1104 6:10	76:9,13,18	61:10
101 2:12,17	212 6:10	3,800 66:3
1015 77:11	216 6:14	3:30 75:6
11 1:6,9 2:9	22 49:19 51:22	300 33:15
7:11,15 21:9 57:5,14	55:12,14 61:17,23	3000 3:13
62:6 77:6,18,21	76:11	301 33:15
79:13 80:12	2200 2:5	303 34:17
11:15 23:10	2210 5:18	304 34:18
111 3:17	223 31:10	305 34:19
1113 81:21	22nd 5:22 76:14	306 34:19 81:21
11th 4:9 6:5	23 32:1	308 34:20
1251 6:9	23rd 46:25	309 35:3
13 57:8	24 57:17 71:12	31 58:9
1440 3:8	24th 57:1 79:17	310 35:3
1450 3:5	25 7:2	
15 70:17		

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312 3:18	441-0828 3:9	81:7
32 58:11 71:11	441-2430 5:23	705-8894 4:17
329-7400 3:6	444-3900 5:9	754-2501 5:19
33 47:15 58:20	444-7000 2:24	770 3:8
332 38:3	447-9200 3:14	781-7800 5:13
334 38:3	449-1444 6:6	7th 77:6
335-4569 6:10	4650 4:21	
337 38:8	47 47:13	<hr/> 8 <hr/>
338 38:9	4th 5:5	8 57:2 71:12
339 38:9 81:20		831 5:19
342-9600 6:15	<hr/> 5 <hr/>	845-3763 3:18
363 50:2 62:6 65:23	5 28:9,24	849-4998 3:24
79:25	5.8.1 54:3,6	85004 4:5
363(b) 49:20 50:2,17	5.8.2 52:25	8th 5:12 85:1
80:2,25	500 5:8 63:16	
363(b)(f) 49:21	510 4:17	<hr/> 9 <hr/>
363(f) 50:2,5 51:2,6	520 61:20	9 57:3 60:12
52:13 62:19 65:1	5260 5:5	9:00 30:19
363(f)21 82:8	53212-1059 4:21	9019 13:11 16:1
364-6714 2:6	545 81:21	916 2:24 3:6,9,14
3663(f)4 82:4	558-6000 4:10	4:10 5:9,23 6:6
381 62:1	559 5:6	93704 5:5
383 61:25	591-1485 2:13	93902 5:18
39 31:5	5th 77:9	94010 6:15
3d 81:21		94104-5501 2:6
	<hr/> 6 <hr/>	94105-1101 5:13
<hr/> 4 <hr/>	6004(h) 27:19 57:22	94111 2:18
4 17:22 28:2 75:25	6006(d) 57:22	94111-5894 2:12
40 4:5	602 4:6	94303-2223 3:23
400 3:5,13 4:9 5:22	60603-4080 3:18	94620 4:16
6:5	621 2:23	95814 3:9 4:9
4001(a)23 27:19	650 3:24 6:15	5:9,23 6:5
414 4:22	6875 1:25 85:1	95814-4407 3:14
415 2:6,13,18 5:13		95814-4434 3:5
42 47:14	<hr/> 7 <hr/>	95814-4731 2:24
421-6140 2:18	7:15 31:2	962-5110 4:22
432-5400 5:6	7004 50:15 52:16 63:5	
		<hr/> A <hr/>

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a.m 30:19	adding 56:23	33:18,19 34:6
ability 18:15 47:1 60:7 78:15 80:17	addition 47:18	35:25 40:24 69:18
able 10:15 19:5 24:6 25:8 30:22 35:23 39:17 41:1 47:25 79:21	additional 45:18 55:15 82:9	agreement 17:4,18,20,21 18:7,8,9 19:2,6 20:2,25 21:15 24:4 26:1 30:5 31:2,6 34:13 35:14,15,17,25 36:3,13,24 37:1,2,16 39:5,10,19 45:19 46:6 52:25 53:10 54:4,5 58:5 67:13 68:23 70:3,6 71:15,17
absent 80:7	address 10:17 14:10,11,17 15:2 29:7 38:15 51:14 54:22 56:9 58:25 83:19	agreements 12:20 17:7,11 18:2,14 28:13 34:25 39:5,6,12,13,22 46:4,7,9,12 47:16 54:3 69:4
abundance 15:24 58:12	addressed 11:6 22:23 29:19 32:13 37:9 54:17	agricultural 77:14
acceptable 33:18 37:21	addressing 40:4	ahead 25:2 26:6 27:23 32:15 56:19
accepted 68:12	adds 11:21	al 38:9
acception 75:16	adequate 48:13 57:12 80:22	albeit 12:18
access 78:20	adequately 81:2	Albert 5:3 8:18 22:21 40:19 44:19 52:22 54:21 74:10,24
accommodating 75:13	adjusted 40:11	allegations 42:21
accordance 70:6	adjustments 29:21	alleged 42:25
accordingly 45:1 67:10 77:20 80:24 81:18 82:3	admitted 48:18 68:12	allegedly 41:24
account 18:1	adversary 21:10 29:3 52:15	allegely 44:14
accurately 34:13	advertisement 80:22	Allen 5:8 8:20
acknowledge 41:2	advising 67:20	all-encompassing 51:7,20
acknowledged 39:14	affect 22:5,13 29:21 57:6	allow 12:3 14:22
acquired 53:2	affectuated 26:11	allowable 54:13
acquisitions 48:12	afforded 19:18	allowed 54:18
action 18:25 43:22	afternoon 26:11 59:13	allowing 23:23 26:9
active 78:3	against 49:9 66:19 77:8 81:25	allows 21:21 40:10 80:1
activities 12:23	agenda 10:10,14 28:1,3 75:15	already 42:4 69:25
actual 25:25 36:12 41:14	agent 8:6,8 27:13 35:16 37:17 70:3	
actually 10:13 20:4 24:22 30:10 31:2 36:8 38:14 40:8 44:2 66:9 70:16	aggregate 17:8 19:20 20:4,5	
add 12:11 31:1 49:25 57:22 60:9 71:13	ago 11:2 17:5 20:9 22:4 44:21 60:20	
added 12:9 45:19 46:8 52:25 55:14	agreed 17:5 19:8 32:7	

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76:23	anybody 14:21 50:10 51:16 56:9 68:6	apprised 63:24 81:14
alter 24:14		approached 36:10 68:21
Alto 3:23	anyone 16:22 21:16,20 24:16 45:12 48:16 49:2 52:19 64:9 65:4 67:19 72:15	appropriate 21:2 25:18 27:14 55:6 66:16 76:20 77:25
am 11:17 12:1 13:21,22 14:6 15:11,12 23:16 25:1,15 26:6 29:11 36:7 37:4,12 39:1,23 44:4 48:19 49:2,4 50:9 51:6,8 53:25 56:22 58:14,15,22 61:9,13,23 63:3,15,17,21,25 64:23 66:15 67:4,25 72:7 73:16 74:24 76:11 83:16 85:1	anything 16:9 21:7 38:25 44:22,23 45:2 76:18 82:13	approval 14:1 15:5,17 28:17 35:18 36:25 41:18 54:7 60:1 79:18 80:7 83:17,21
amend 69:10 71:5 74:23	anywhere 62:12 63:10 71:22	approve 10:19,25 12:16 13:19,23 15:11 16:1,14 24:22 25:2,18,24 26:6,18 28:25 29:8,11 37:2 55:11 63:7 69:21 76:22 79:20 80:9,16
amended 61:25 62:3 64:18,20 65:22 69:15,22 76:6,12,14,15 81:11	APA 29:14 32:11 38:18 52:25 57:9 69:17 71:19	approved 15:19 25:4,23 37:23 41:15 49:16 76:2,3,5 80:3,25
amendment 69:13	apart 50:16	approving 12:2 15:4 27:4 41:11 80:11
Americas 6:9	apologies 20:16	approximately 17:22
among 23:4 25:9	apologize 32:16 57:15	area 25:20
amount 17:8,9 19:20 25:17 31:11,23 32:2,3 33:18 34:6 35:8 65:11 70:13 78:22	appeal 13:24 15:14 58:1	argue 15:20
amounts 34:21 38:8	appear 31:9	argument 60:7
analogous 60:13	appearance 21:20	arise 83:19
Anastassiou 5:16,17 9:7,8,23,24	appearances 7:8 9:19,21 10:6 21:18	arrangements 19:8
ANC 19:24	appearing 8:20	arrearages 26:2
announced 72:18	appears 11:11 32:11,13 34:13	Article 60:12
answer 13:16 14:2 31:18	applaud 12:21	arye 33:1
answered 57:10	applicable 27:20 44:17 69:10	aspect 11:6
anticipate 25:3	application 26:23 55:20 61:16	aspects 13:10 14:10
anticipated 35:22	applied 73:13	assert 60:7 63:19 68:6,8
	apply 20:6 76:22	asserted 17:12 33:23 51:16 54:16 64:10 67:22 81:25
	appointed 18:4 77:20 78:1	asserts 81:5
	appointment 77:19 78:3	asset 30:5 31:6
	appreciate 16:17 75:13	
	apprise 81:17	

39:5,10,19 40:24 45:19 46:6 54:4,5 71:17 81:5 assets 17:17 18:9 25:6 38:19 43:8 44:1 48:13 50:4,11,13 51:4 52:24 53:2,12 58:13,17 60:12 62:13 66:20 71:12,14,19,21 78:25 79:6,23 80:3,4,8,11,13,14,20 ,21,23 81:1,9,18 assign 12:6 46:5,7 68:17 assigned 10:25 assigning 11:20 68:16 assignment 26:4 29:21 34:5,12 45:13 58:25 72:25 associate 45:20 Associates 5:17 9:23 Association 3:21 9:6 68:16 assume 10:25 12:6 18:21 30:2,16 38:5 46:5,7 55:19 56:9 57:19 76:25 assumed 26:2 30:9 31:12,19,24 32:1,10,12 33:5,12,25 34:6,22 57:20 75:18 assuming 11:19 13:17 28:25 32:21 33:13 36:2 57:18 67:4,25 assumption 22:5,6 29:21 30:1 31:18 32:5 33:17 34:4 36:11 45:13 46:9,13 75:23 76:3 attach 37:21 70:3 attached 70:7	attempt 22:16 attempted 19:1 attendance 28:4 attention 65:22 attorney 2:16,22 3:3,7,12,16,22 4:4,8,15,20 5:4,7,11,21 6:4,8,13 13:3 27:12 32:8 36:10 85:1 attorneys 2:4,11 5:17 13:4 auction 17:22 29:15 30:18,24 48:8 57:1 62:1 79:16 80:21 authority 22:19 53:4 57:14 58:3 79:7 authorize 69:6 authorized 58:7 available 47:21 74:24 78:17 Avenue 3:23 4:5 5:5 6:9 avoided 54:25 aware 15:11 45:11 48:19 64:11 67:7 AZ 4:5 <hr/> B <hr/> Baker 5:4 8:19 74:10 balance 19:22 balancing 16:20 20:21 bank 3:12 8:5,8 13:4 25:11 27:12,13 32:25 66:19 81:20 bankruptcy 1:1 12:20 50:10,14 54:6,14,18 57:22 63:5 77:11 80:1 81:7,10	banks 17:13 18:6 19:17 31:14 37:18 47:12 70:4 72:13 bank's 71:3,5 Bardwil 1:17 barred 44:6 based 31:11,23 34:20 38:7 49:4 56:8 59:20 64:8 78:12 basically 20:20 31:8 41:23 basis 44:23 48:10 62:5 63:1 Bates 3:21 9:5 bearing 20:22 23:2 became 12:11 47:3 become 57:24 Bee 60:16 beginning 47:1 begins 54:9 65:24 78:11 79:11 behalf 8:2,5,8 9:8 16:15 34:10 35:12 42:12 44:19 46:1,24 52:22 61:12 69:24 70:9,25 72:24 belief 11:5 believe 10:22,24 17:15 18:11 19:22 20:3 22:22 24:9,13 29:11 32:6,22 33:2,6,12 34:17,23 35:6,11 36:10,14,15 38:9,21,22 39:17,25 40:9,22 41:10,16,21 42:9,21 45:9,10 48:21 49:9 51:9 54:22 55:5 56:8 57:18 59:24 60:17 61:4,24 64:25 65:1
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

71:18 75:17 84:2 believed 65:3 believes 82:1 benefit 20:18 21:6 42:5 Benson 2:17 7:20 Berryman 5:3 8:18,19 22:21 40:19,20 44:19 52:22 53:7 54:21 55:2,5 59:9 63:15 64:2,17 65:6,10,12 67:24 69:18 71:10,21 74:10,23,24 75:2 83:12 best 11:21 15:25 18:8 19:9 21:1 48:15 80:23 better 66:7 beyond 16:7 54:14 68:2 69:14 bid 49:16 bidder 17:21 19:2 22:7 29:16 30:20,21 31:4,5 48:9 79:19 bidders 31:4 bidding 10:19 11:5 57:1 79:15,17 bids 48:4 Bill 9:5 binds 60:2 Bingham 3:22 9:6 bins 38:20,22 40:12 69:3 Birney 5:22 9:11 bit 20:17 47:4 70:19 bite 15:13 blanket 49:21 50:6 52:20	blanketed 52:6 board 24:8 body 64:19 67:6 bold 62:15 65:24 books 43:15 bought 73:13 bound 55:7 64:4 bounds 40:7 Box 4:16 5:18 Bradley 2:3 6:18 7:11 77:20 Brand 2:23 7:17 74:14 break 23:24 47:4 62:16 Brent 4:3 8:2 35:12 74:13 brief 22:16 23:13 65:9,16 briefly 49:14 bring 16:18 56:5 broad 51:7,15 59:24 broadcast 13:6 broader 56:13 61:10 broadly 60:15 Brothers 5:21 9:12 46:10 brought 51:23 budget 44:10 building 31:24 build-out 57:13 58:6 built 70:22 Burlingame 6:15 business 42:9 78:8 79:21 83:25 businesses 79:8,14 buyer 30:9 43:7,14,25 44:19 51:13 52:23,25 54:21 69:1,17	72:14 74:6 buyers 52:8 buyer's 51:13 <hr/> C <hr/> CA 2:6,12,18,24 3:5,9,14,23 4:9,16 5:5,9,13,18,23 6:5,15 Cal 5:15 9:8,24 48:5 Cal-Ap 4:12 9:1 calculated 81:16 calendar 7:6 10:9 11:16 28:7,9,23 56:8 75:25 76:11 82:19 83:7 California 2:12 California 1:2,5,9,15 2:17 57:19 68:15 77:15,17 78:5,6 85:1 Canning 1:9 cap 19:20 20:4,6,14 capital 71:16 capitalized 71:14 Capitol 2:23 3:5,13 4:9 5:8,22 6:5 carefully 60:18 Carr 6:14 10:4 cars 38:20,21 40:14 41:5 cart 35:20 carve 45:3 case 1:5,8 12:23 13:22 19:24 24:22 26:6 31:16 36:6 37:6 42:17 52:11 53:10 60:10 63:6 78:1,3 79:13 81:14,15 cases 56:13 77:19,21 cash 71:3,6,9
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

79:3,4,7	circulating 72:9	code 54:14,18 62:11 66:14 80:1
cause 14:5 80:10	circumstance 13:7	cohesion 34:8
caused 85:1	circumstances 14:4 21:1 25:5,15 26:5,24 27:22 46:18 48:15 57:4 63:5,9 76:21 80:4 81:16	coincide 37:9 40:8
caution 15:24 58:12	claim 21:9 54:24 60:3 63:22 66:17,19,25 67:7 71:3,5	Colabianchi 2:10 7:14 45:20,24 46:1 61:11,15,20,24 62:3
cell 23:18	claiming 62:24	Coleman 2:4 7:9 10:7,8,13,22 11:9,25 12:3,15 13:2,15 14:2,9,19,24 16:9 17:1 18:13,19,23 19:16 22:11 23:11,22,23 24:19,20 26:8,14,20 27:2,9,12,25 28:17 29:4,6 82:9,13,14 84:2
Central 4:5	claims 17:12,15 18:3,6 19:17 31:14 34:16 59:16 66:5	collateral 71:3,7,9 79:3,5,7
certain 14:10 25:4,15 37:9 69:2	clarification 22:8 70:1	collectively 77:7
certainly 15:17,24 19:23 33:22 36:6	clarify 70:5 71:11	Colusa 1:9
certainty 20:20	clarity 76:4	combination 35:5
certificate 76:13 85:1	Clark 6:19 46:21,23 47:7	comes 52:19
Certified 85:1	class 61:21	comfort 81:12
certify 85:1	clean-up 68:3	comfortable 39:1 49:22 51:8 53:25
Chairman 24:7	clear 18:3 19:14 50:4,11,13,20,22 51:5 52:14 53:2,13 59:15,19 62:10,13,19 63:20 66:2 81:1,3,6,9,15,18,24 82:4,8	commenced 30:18 73:11
challenge 71:3,5	Clerk 65:13 74:3,7,9	commend 84:5
chance 10:11 14:15	clients 34:16,18 63:21 65:7	comment 13:9,21 22:23 25:20 44:24 63:21 66:6 69:25
change 14:25 21:7 22:17 49:19 59:4 72:4	client's 43:11	comments 14:12 27:18 59:18
changed 58:2	close 35:19,23 37:6 66:13 70:16 73:11	Committee 2:21 7:17 13:4 16:16,20 17:13 18:5 19:19 22:17,19 24:3,7 25:11 70:25 71:4 72:12 74:15 78:1,2
changes 40:10 56:18 58:9	closing 17:7 30:23 36:3,20 37:20 57:23 70:14,21	Committee's 27:10 71:8
Chapman 3:17 8:8	closure 79:22 80:18	
Chapter 1:6,9 2:9 7:11,15 57:14 77:6,18,21 79:13 80:12	Coast 5:3 8:20 30:9 74:11	
characterize 14:4		
Chase 4:3 8:3 35:3,4,8,11,13 36:24 37:17 50:22 70:1,4 72:13 74:13		
checking 75:8		
Chediak 9:17		
Chicago 3:18		
Chili 5:15 9:8,24		
circulated 73:21		

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

<p>communication 44:20</p> <p>companies 42:5 47:13 48:12</p> <p>companion 28:8 29:8</p> <p>company 10:5 18:10 50:8</p> <p>compare 11:20</p> <p>compel 28:4 75:16,23,24</p> <p>competitor 42:4</p> <p>complain 14:15</p> <p>complaint 17:16 42:1</p> <p>completely 17:11,14</p> <p>complies 69:16</p> <p>comply 52:18</p> <p>component 25:7</p> <p>comprehensive 46:4 47:9 65:3 66:24 67:2</p> <p>comprised 48:13</p> <p>compromise 13:14,21,23 14:1,7,25 15:4,5,11,19 16:23,25 21:19,21,22 24:11,17,23 25:1,2,7,9,14,19,23, 24 26:6,9 28:5,25 29:1 33:17 76:2,23,24 83:17,21</p> <p>compromised 39:9</p> <p>compromises 13:11</p> <p>ConArga 38:4</p> <p>conceded 33:23</p> <p>concept 40:25 57:3</p> <p>concern 15:7 44:16 79:14 80:5</p> <p>concerned 62:18</p> <p>concerns 55:13</p> <p>concessions 25:25</p>	<p>conclude 11:21 83:18</p> <p>concluded 31:2 35:4 84:8</p> <p>conclusion 29:16</p> <p>conclusions 72:8 76:21 77:2,23</p> <p>condition 17:19 19:5 57:23</p> <p>conducted 47:23 79:16</p> <p>conducting 60:11</p> <p>confer 65:7 71:23</p> <p>confidence 20:25</p> <p>confident 39:23 61:9 73:16</p> <p>confidential 43:6</p> <p>confidentiality 47:15</p> <p>confirm 22:11 24:2 69:14</p> <p>confirmation 24:14</p> <p>conflicting 22:18</p> <p>conflicts 71:8</p> <p>conform 20:2</p> <p>confused 43:18</p> <p>connection 15:19,22 27:16 28:13 58:21</p> <p>consent 50:24 51:1,6,10</p> <p>consented 53:24 54:23 62:22 64:9 67:21 82:5,7</p> <p>consenting 66:18,19 68:10,11 81:24</p> <p>consider 50:5</p> <p>considerable 20:18</p> <p>consideration 57:11 79:4 80:13</p> <p>considerations 20:22</p> <p>considered 25:1</p>	<p>considering 25:16</p> <p>consistent 26:10,25 27:17 54:20 57:18</p> <p>consolidated 77:10</p> <p>consolidation 17:16 18:25 21:9</p> <p>Cont 3:1 4:1 5:1 6:1</p> <p>contacted 47:13</p> <p>contain 68:22</p> <p>contained 71:9 72:19</p> <p>contemplate 37:1</p> <p>contemplated 54:10,12 72:9</p> <p>contemplates 35:17</p> <p>contemplating 37:3,7</p> <p>contend 38:20</p> <p>context 26:3</p> <p>contingent 41:11,18</p> <p>continue 13:8,13,17 14:6 73:4 80:17 82:17 83:4,14,16</p> <p>continued 56:6</p> <p>contract 11:1,20 20:7 24:14 26:4 31:12,18,25 32:4,6,22 33:5,11,25 38:5 40:10,13 54:20 55:19 56:5 69:10 75:18</p> <p>contractors 60:14</p> <p>contracts 11:22 12:7,9 18:3,20 22:6,9,25 23:3 26:1 29:9 30:8,12,16 32:10,11 33:13 34:1,4,22 35:21 39:7,8 40:8 45:13,18,20 46:8,13 56:10 68:17 69:11 76:25 77:1</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

control 10:20 11:11,12,14,18 45:22 46:3 51:19,22 55:12,23 61:23 76:5,10,13	11:2,6,10 12:1,2,5,13,21 13:8,18,20 14:5,17,23 15:9 16:1,5,17,22 18:12,22 19:15 21:4,12,16,17,22 22:14 23:1,8,10,15,22 24:9,24 25:13 26:16,21,22,24 27:4,14,20,22 28:7,20,23 29:5 31:20 32:14 34:9,15 35:1 36:2,16,21,25 37:2,3,11,24 39:3,6 41:7,13,17,20 42:2,4,11,16 43:10,17 44:4,9,18,24 45:8,12,22,25 46:15,19 48:16,22,24 49:2,12,20 50:2,7,24 51:3,11,17,19 52:2,8,11 53:1,4,16,25 54:4,6,11,19,22 55:1,3,8,16,25 56:2,12,15,19,21 57:25 58:14,19,22 59:2,6,13 60:24 61:2,6,13,18,22 62:2,9,16,19,25 63:14 64:6,22 65:8,11,13,18,25 66:6,11 67:4,10,14,19,25 68:4,10,12,14,24 69:8,16,19,21 70:8,24 71:20 72:6,10,15,22 73:3,14,18,24 74:4 75:1,4,7,19,25 76:10,20 79:4,18,20 80:3,8,10,13,16,22 81:2,7,13,15,22 82:3,13,15,16,22	83:2,6,11,14,25 84:3 Courthouse 1:15 courtroom 7:8,12,25 8:13,23 9:19,23 14:21 16:23 21:18,19 24:10,22 46:20 49:1 66:23 Court's 14:12 15:7 54:2 55:13 56:6,8 63:8 77:2 covers 45:10 create 58:2 created 47:18 credit 78:19,22,23,24 79:3,5 creditor 18:5 24:13 27:9 53:10 55:4 61:10 64:3,19 66:17 67:21 78:1 creditors 9:4,9 13:6 25:18 52:6 56:24 59:20 60:19 62:21 63:6,16,19,24 64:9 66:12 67:3,6 78:21 79:25 80:24 81:8,13 82:5,6,7 creditor's 52:15 Creditors 7:18 13:4 17:13 19:19 24:3 25:10 Creditor's 72:12 CREDITORS 2:22 critical 47:19 52:24 crop 20:21 crossed 13:24 crude 79:15 CSR 1:25 cure 17:7,8 26:2 30:12 31:11,23 33:18 34:4,6,21 35:9 36:11
-----------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

38:7 70:13	deem 64:20	dilemma 15:10
current 38:10	deemed 18:20	diligence 29:22 31:15
currently 79:9	defaults 17:8 35:9	34:22 46:17 57:4
Curry 5:15 9:8,24	defined 71:14,19,22	63:22,23
31:10,17	definition 56:24	direction 43:21
cut 71:2	definitive 44:7	56:6,8
Cutler 3:17 8:8	delve 47:16	directly 14:3 66:22
cycle 78:8	denied 11:6 28:10	Director 6:19 46:21
	55:18 56:2	discharge 12:19
	denoting 44:15	17:7 18:1,14 28:13
<hr/> D <hr/>	denying 51:22,25	39:4,6,8,12,13,20,22
d/b/a 1:9	dependent 78:16	disclosure 47:16
Dale 2:22 7:16	depends 75:9 82:25	discovered 30:15
16:15 70:25 74:14	depose 28:12	discovery 44:7
danger 80:6	deposition 28:5,15,19	discretion 80:8
data 44:12 47:17,18	depreciation 80:6,19	discuss 40:24
66:24	Deputy 65:13	discussed 40:21 70:2
date 47:6 78:18,22	describe 17:1,2 30:16	discussion 11:9 18:17
82:17	45:20	20:11 23:20 38:12
daughters 18:24 21:10	described 19:13	53:18 59:14 72:2
day 70:17 85:1	21:6 31:6	discussions 19:7
days 17:5 44:21 60:20	describing 21:14	disinterested 85:1
77:9 82:21	description 39:21	dismissal 29:2
dba 31:10	40:7 46:17 61:4	dismissed 18:24
deal 16:18 19:12	designee 30:10	dispute 41:24 44:5
22:20	detail 31:6	62:25 63:2 64:11
dealing 11:2 14:20	detailed 34:3 47:9	66:20 67:23 68:25
dealt 39:5 43:11	deterioration 80:7,20	82:1
debtor 1:6,10 11:13	determine 29:18	disputed 63:20 65:5
25:6 77:18,19	determined 31:4	67:10 68:9
debtors 20:23	devices 37:11	disputes 12:19
38:21,25 47:12	Diamond 4:13 9:2	District 1:2 46:11
69:5,7	34:18	DIVISION 1:2
77:7,8,12,16,21,24	dictate 14:6	DLA 6:9 10:2 75:20
78:4,8,9,14,15,16,18	different 52:17 61:8	docket 31:9,10,21
79:1,2,12,15 80:3,4	differs 29:14	32:19 33:6,15
decided 40:16 47:20	difficult 16:18	36:22 38:1,3,8 55:12
declaration 48:22		61:23,24 62:1
49:1,5		document 26:17 46:3
decrease 80:15		

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

documentation 42:22 45:18	effect 22:25 68:22	entities 12:18 14:25 15:6 16:6 17:10,17,19,23 18:2 19:7,13 20:1 22:10,12 24:4 25:10 27:8 41:10,14 42:23 47:15,24 68:20 74:12,24
documents 29:22 43:15 46:4 47:19 58:8 64:13	effected 53:9	entity 17:24 48:5
dollar 78:23	effectuate 70:17	enumerate 52:12
dollars 17:9,22 31:6	effectuating 70:22	enumerated 50:5 51:6
Donald 2:16 7:19 16:6	Effie 5:16 9:7,24	envision 42:8
done 16:12 20:17 29:23 37:9 40:3 63:21 67:15 73:3,12	effort 30:6,25 67:2	equal 17:6
Donna 6:3 9:13 74:18	efforts 18:8 19:9 21:1 48:10,13 58:4 78:10	equally 76:22
dotted 13:24	eight 38:19,23	equipment 4:3 8:3 10:5 33:19,24 35:3,6,10,13 42:6 70:2
Downey 2:23 7:17 74:14	either 26:18 47:20 54:18 66:8,15 75:1 82:22 83:3	equitable 19:23
draft 31:1	element 52:24 53:14	errors 70:22
drafted 38:18	else 64:9 71:22 72:13,15 76:18 82:13	escrow 70:18,21
drafting 39:24	e-mailing 22:3	Espinosa 81:21
dramatic 80:19	embodied 37:4	essence 21:21 25:21 45:23 47:8 80:5
dramatically 78:15	embroiled 37:15	essense 80:14
drawn 65:22	eminent 80:5	essential 19:5
drop 28:16	employee 43:1	essentially 17:4 32:3 33:18 35:4,9,10 47:4,5 50:21 53:24
due 17:6 29:22 31:15 34:22 42:20 46:17 53:5 57:4 60:17 63:22,23	employees 16:13 20:23	esssentially 34:5
Duff 6:20 46:21,22 66:23	employment 78:13 80:19	estate 17:15,17 18:5 21:6,8 43:8 63:24 79:25
during 78:14,16	enable 34:7	estates 80:24
<hr/>	enabled 47:16	estate's 79:23 80:11,20
<hr/> E <hr/>	encumbrances 66:3 81:4	estimate 17:8
earlier 30:25 36:9 70:2,11 71:2	endorsing 16:7	estimated 32:4
early 41:25	engaged 46:25 47:8 53:21 59:14 77:12	estopped 76:17
easement 46:11	Engineering 6:3 9:14 33:5	
easier 28:1	Enjoy 19:15,16	
East 3:23	enter 18:9	
EASTERN 1:2	entered 73:8,9,11	
Ed 31:10	entire 61:10	
	entirely 38:15	

et 38:9	expectations 51:14	32:17 34:19 75:16
evening 26:11 31:3	expend 78:9	favor 16:21
event 31:17 33:1 70:19	expenses 78:14	favorable 16:9
everybody 47:5 66:25 68:23 73:17	experts 48:11	feature 18:7,23
everyone 23:17 61:19,23	expired 59:23 68:17	Fed 81:21
everyone's 62:10	expires 79:8	feel 63:6
everything 20:14 70:21	explain 29:24 64:13	fees 17:6
evidence 41:25 43:9,23 48:14 52:13 63:18 66:17,22 81:22	explanation 34:3 58:11	Felderstein 3:4 7:23
evidentiary 44:23	explanations 30:4	felt 20:25 21:1
example 50:20	exposure 48:13	fifteen 23:9,25
except 73:6	expressed 47:14 48:4	figuratively 48:1
exceptional 80:4	extend 18:15	figured 23:6
excess 78:23	extent 12:17 27:18,20 28:11 30:14 31:17 54:13 60:5 63:1,6,18 64:8 66:17	filed 10:9,23 13:3 26:17,19,20 29:14 30:5 32:25 36:8 42:1 46:9 50:14 61:7 66:25 73:15 76:14 77:5,8,18,19
exchange 18:13 19:11	extremely 16:11	filing 37:7 42:16 76:14 79:2,13
excluded 58:12 71:12,18,21	eyes 52:20 65:20 66:6	filled 57:3
excuse 17:25 36:23 61:7 78:13	<hr/> F <hr/>	filling 56:24
execute 58:7	face 13:16	final 18:23 31:15 36:13 45:19 57:24 60:19 71:3,6,9
executory 18:19,20 23:2 26:1 29:9 30:8 35:21 56:5 68:17 77:1	facilitate 79:13	finalizing 45:17
Exhibit 11:22 30:7 35:7 36:9,14 46:3 69:3	facilities 47:25	finally 29:25 48:3 49:7
exhibits 29:14 30:6	facility 47:19 48:6	finance 4:3 8:3 34:7 35:3,13 70:2
exigent 25:5 46:17 57:4	facing 19:4	financial 80:17
exist 23:4 44:16 82:2	fact 24:21 26:1 31:5 33:23	financing 35:5 36:12 48:7 78:17 79:9
exists 80:10	failed 56:9	finding 48:20 49:3,4 57:5 62:14,19 63:1 80:12
expect 67:11 75:5	fair 19:22 45:6 80:23	findings 25:4,16 57:15,16 72:7 76:21 77:2,23 82:10
	fairly 33:17 61:9 75:12	
	faith 48:21 49:3	
	farming 12:18 17:24 18:2 38:9 41:10	
	Farms 2:15,16 4:13,14 5:15,16 6:8 7:21 9:2,3,8,9,24,25 10:2 18:10 21:25 31:11,25	

finds 80:3,10,22 81:2,15,22 82:3 fine 12:4 37:15 54:1 58:18 65:8 73:2 firm 74:25 first 7:8 12:16 21:18 51:21 56:23 61:21 Fitzgerald 7:23 Fitzgerald 3:4 five 44:21 65:6,11 fixed 38:19 Fleury 5:22 9:11 Floor 2:23 4:9 5:5,8,12,22 6:5 focus 30:7 food 6:22 48:11,12 Foods 1:5,8 5:11 7:7 8:17 28:9 32:20 33:10 38:4 77:3,4,6 78:5,7 footing 73:10 foreclosure 60:11 foregoing 85:1 form 27:5 72:16 formal 82:12 formalized 37:2 former 42:25 59:22 forward 14:22 15:8 16:3,14,21 17:20 21:22 25:8 28:18 32:5 34:2 40:1 51:18 53:22 55:12 65:4,14 80:15 fourth 65:24 Francisco 2:6,12,18 5:13 30:20 Fred 6:24 8:14 Fredericks 2:10 7:14 69:23	free 18:3 19:14 50:4,11,13,20,22 51:5 52:14 53:2,12 59:15,19 62:10,13,19 63:20 66:2 81:1,3,6,9,14,18,24 82:3,7 Fresno 5:5 60:16 Friday 56:1 82:22 Friedman 2:17 7:20 Fruit 4:13 9:2 34:18 full 57:14 fuller 14:14 fullest 54:13 fully 15:11 21:2 24:3 fund 31:14,16 79:9 funding 30:23 funds 19:12 34:21 70:16 future 82:17 <hr/> G <hr/> Gardner 4:3 8:2 35:12 36:6,23 37:8,16 74:13 Gebhard 5:11 8:16 32:23 Gebhardt 32:24 general 4:19 6:25 8:12,14 33:16,19,20 34:11 54:6 63:9 64:15 72:24 74:20 81:13 genesis 41:25 Genshlea 9:17 gets 74:21 getting 19:12 22:18 Gill 4:13 9:2 34:18 Ginter 2:22 7:16 16:15 20:15 22:15	23:7,9 24:2,6 27:11 70:25 74:14 given 13:5 14:1 24:25 45:1 49:13 53:9 60:13,14,21,23 63:8 75:17 81:16 giving 52:17 Glen 6:19 46:20 Glenn/Colusa 46:11 glitch 82:18,25 gor 16:10 Gordon 5:7 8:19 44:21 63:14 74:25 75:1 gotten 30:14 Gould 5:22 9:11 grant 11:15 granted 11:22 26:25 47:4 55:21 79:6 83:22 gray 25:20 great 30:6 greater 64:19 Greg 7:10 GREGORY 2:3 group 8:6,17 9:18 13:4 27:12,13 growers 3:21 9:6 16:13 20:24 68:15 grown 17:23 guess 12:15 13:19 14:2,9,15 19:21,25 24:20 28:2 29:6 30:7 37:12 44:4 56:16 guessing 44:4 <hr/> H <hr/> hallway 23:25 hand 85:1 handful 12:9
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

hands-off 17:14	Herring 3:13 8:5 74:16	69:18,20,23 70:9,15 71:10,23 72:4,5,11,17,21 73:6,16,19,22 74:21,23 75:3,12,20,22 76:8,17 82:14,20 83:1,9,13,24
Hanover 81:20	highlighted 54:11	Honorable 1:17
happen 35:24	Higueral 4:14 9:2 34:20	Honor's 27:17 59:18
happened 76:10	Hoffelt 9:11	hope 34:25
happens 13:8,12 83:5	Hoffett 5:22	hopefully 23:17 30:4
hard 42:8 84:4	hold 16:19 62:11	Horn 6:14
Harrison 2:5 7:10	holder 53:7 66:17	horse 25:21 31:4 35:20
Hart 46:10	holders 54:23	hours 24:1
harvest 20:5,6	Holland 5:8 8:20	housekeeping 11:3
harvesting 18:11 19:12	home 20:20	
haven't 35:14 43:13 53:5 63:24	Honor 7:9,13,16,19,22 8:4,7,10,16,18,25 9:5,7,10,13,16,22 10:1,3,8,22 12:4,10,15 13:5 15:2,3,4,15,20 16:8,14,21 17:1 20:4,8,16 21:5,15,24 22:11,15,21 23:7,9,11,23 24:6,20 27:2,6,16,24 28:11,17,22 29:4,10 30:3,17,25 32:9,16,23 33:3 34:10,24 35:12 36:5,8,17,24 37:16,19,23,25 38:17 39:2,25 40:4,19 41:5,12,16,18 42:12 43:2,21 44:10 45:6,9,17,24 46:3,16 48:19,21 49:6,18,23 50:18 51:1,9,24 52:22 53:15,20 54:21 55:10 56:16 58:18 59:5,8,9,17 61:3,9,11,15,21,24 62:4,14 63:12 64:2,17,25 65:6,12,20 66:9,21 67:9,12,18,24 68:2,5,13	housekeeping 11:3
having 20:20 45:15 50:4 66:4 71:16 78:16		<hr/> I <hr/>
head 37:13		i.e 57:24
headquarters 77:16		idea 17:14 51:15
hear 52:8		ideal 14:4 64:7 83:10,12
heard 22:15 24:16 26:17 30:25 40:19 44:20		Ideally 81:5
hearing 10:10,17 11:3 13:8,13 14:7 15:23 26:9 37:14 49:24 56:4,6,7 60:20,21 64:21 73:4 79:18 82:17,18 83:4,14,16,17,18 85:1		identified 30:9 34:1 50:14 51:4,11 53:5,6 66:4
heartburn 14:5		identify 32:14 42:7 53:22 59:20 60:4 67:3 73:25
held 1:14 30:18 66:18		identifying 29:16 32:17
help 58:21		IL 3:18
helped 66:24		I'll 24:2 29:24 37:11 38:15 75:7 83:18,19,21
hereafter 78:20		I'm 12:7 15:9 18:19 20:9 22:18 27:22 28:25 29:13 36:23 37:9 40:1,17 44:15 49:22 50:5 64:6 65:21 67:16 68:18
hereby 54:10,23 85:1		
herein 85:1		
hereunto 85:1		
Hernandez 1:25 85:1		

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

<p>impaired 22:9</p> <p>implement 23:16</p> <p>important 16:4,11 53:13,14 75:13 80:12</p> <p>importantly 16:19</p> <p>impression 58:2</p> <p>inadequate 15:13</p> <p>inaudible 42:22</p> <p>Inc 1:8 5:11 8:3,17 9:15 10:5 30:9,11 31:25 32:20 35:3,13 74:11 77:4</p> <p>inclination 15:12</p> <p>inclined 13:22 58:14,15 69:21</p> <p>include 60:24</p> <p>included 30:6 70:14 71:13</p> <p>including 20:14 32:12 61:4 62:6 66:1,23</p> <p>inconsistent 55:17</p> <p>Incorporated 8:21</p> <p>increase 78:13,15</p> <p>increased 78:12</p> <p>indeed 60:18 65:2,4</p> <p>indicate 37:22 55:11 63:17</p> <p>indicated 20:8 25:21 76:23</p> <p>indicates 64:16</p> <p>indicating 56:25 67:20</p> <p>Industrial 7:7 77:4</p> <p>INDUSTRIES/ SPECIALTY 1:8</p> <p>industry 47:10 48:11</p> <p>inference 63:13</p> <p>information 43:6 45:3</p>	<p>informed 42:4</p> <p>Ingersol 6:14 10:4</p> <p>initial 10:19 21:12,13 55:25 64:22</p> <p>initially 30:21 46:25 64:23</p> <p>inquired 11:3</p> <p>insert 27:23</p> <p>insertion 71:10</p> <p>inside 24:10</p> <p>instance 18:4</p> <p>instructed 23:18</p> <p>instrumental 46:23</p> <p>insulated 17:11 19:21 20:4</p> <p>intended 44:2 70:20</p> <p>intent 44:13 70:21 71:18 81:8</p> <p>inter 29:13</p> <p>interchangeably 77:24</p> <p>interest 25:18 43:11 47:14 48:4 50:3,12,15 51:4,16 52:15 53:3,13 54:16 55:3 59:20 60:3,4,6 62:10 63:19 65:5 68:7,21 69:2 80:23 81:5</p> <p>interested 24:21 48:6 56:24 81:17 85:1</p> <p>interests 65:4 66:2,4 82:8</p> <p>International 4:12 9:1</p> <p>interrupt 36:23</p> <p>involuntary 77:8,10</p> <p>involved 25:17 33:17</p> <p>irrelevant 42:19</p> <p>Irrigation 46:11</p>	<p>I's 13:24</p> <p>isn't 21:7 50:7 54:15,18</p> <p>issue 15:16 22:19 26:7,13 39:2,4,15 41:4 52:10 55:9 58:15 62:17 83:6</p> <p>issued 11:18 13:9</p> <p>issues 11:3 12:2 14:10 15:21 39:9,20 46:14 58:17 83:19</p> <p>item 28:2,7,9,23 32:19,25 33:6,15 38:8 76:1</p> <p>items 28:2 50:5 68:3 75:25</p> <p>it's 12:2 15:16 25:20,21 31:16 33:23,24 35:15,20 37:8 38:22 41:25 42:8 50:7,16 51:7 52:14,17 54:9,14,18 59:15 61:14 62:24 63:4,19 64:7,13 67:4 70:1 75:9,10 82:23 83:21 84:3</p> <hr/> <p>J</p> <hr/> <p>James 3:16 8:7</p> <p>Janowsky 4:15 9:1</p> <p>Jensen 5:4 8:19</p> <p>Jensenm 74:10</p> <p>John 2:10 7:14 69:23</p> <p>JP 4:3</p> <p>Judge 12:25 17:5 20:19</p> <p>Julie 4:8 9:16 42:12</p> <p>July 47:5 78:11 79:14 85:1</p> <p>jumped 49:15</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

June 7:2 56:7 57:1 61:14 76:14 78:9 79:8,17,21 80:18 jurisdiction 54:22 68:24 <hr/> K <hr/> Kailas 4:20 8:11 74:19 Kasowitz 2:17 7:20 Kevin 2:4 7:9 kick 14:13 47:25 Kirby 3:8 7:25 Kohner 4:20 8:11 74:19 Kraft 33:9,12 <hr/> L <hr/> Lake 6:8 10:2 18:10 21:25 22:2,6,25 24:13 31:25 32:17 75:16,21 Lake's 22:8,13,22 31:25 32:7,10 land 40:7 56:15 landscape 13:22 language 43:10 49:21,22 50:6,9 51:8,21 54:20 64:16 66:11,13 81:12 Lapping 2:9 7:13 12:3,4,6,10 29:7,10 31:21 32:19,24 33:4,9 34:16 35:2 36:5,7,22 38:1,14 40:4,22 41:5,8,16,21 44:10 45:9,14,17 46:16,20 48:19,23,25 49:6,12,18,23 50:18 51:1,9,12,18,24 52:4 53:15,20 54:1,5,13 55:10,24	56:3,13,16,20,22 58:1,18,20,25 59:4,8,14,17 60:24 61:1,3,8 62:14 63:12 64:25 65:19,20 66:1,9,21 67:9,12,18 68:2,5,11,13,15 69:9,13,20 70:11,15 71:23 72:4,11,21 73:2,6,16,22 74:6,8,21 75:3,6,12 76:8,17 81:11 82:9,11,20,25 83:9,24 lapsed 58:1 large 59:19 last 10:9 13:2 14:15 18:7 34:12 38:7 49:9,24 56:1 71:1 75:15 lasts 78:12 late 10:9 later 17:12 58:4 law 2:4,11,16,22 3:3,7,12,16,22 4:4,8,15,20 5:4,7,11,12,17,21 6:4,8,13 8:17 57:19 laws 44:16 lay 56:15 lead 60:1 learned 22:17 lease 31:23 36:11,12 69:10 leases 30:8 35:5,9 50:19 68:18 69:11 Leasing 69:9 lessor 10:5 least 11:5 14:20 26:12 63:1	leave 26:7 37:11 67:17 70:19 74:21 leins 53:23 81:9 Lemoore 33:22 35:6 47:24 48:6 78:5 Len 46:10 lender 8:6 25:11 62:23 lenders 8:9 35:17 60:10 74:17 78:19,22,23,24 79:3,5 lengthy 12:22 33:9 Leslie 6:20 46:22 less 79:11,24 let's 38:1 55:8 56:19 73:24 75:10 Levinson 3:12 8:4 52:9 74:16 Lewis 2:5 4:4 5:21 7:10 8:2 9:10 74:13 liabilities 32:11 57:20 liability 57:18 License 85:1 lien 9:3,9 50:3,12 51:16 52:14 53:6,7 54:16,23,24 58:17 60:6 62:24 63:1,19 64:10 67:22 68:7,8 79:6 81:25 lien-free 51:21 52:12,21 55:3 62:24 63:4,7,11,17,25 64:4,10,13,16,24 liens 50:20,22,23 51:4 53:2,13 54:25 59:15 62:13,20 63:20 64:11 66:18 81:1,3,6,15,18,24 82:4,8
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

light 24:21 28:17 55:10 likelihood 25:16 75:8 limited 1:5 13:10,12 19:17 42:15 44:7 61:18 62:6 63:8 limiting 13:10 line 29:25 32:1 49:8 69:16 71:12 78:19 lined 49:9 lines 26:3 34:12 lining 55:17 liquidation 42:5 79:23,24 80:19 list 30:12,13 40:14,24 46:4,6 47:11,13 60:14,20 61:9,10 listed 41:6 66:12 69:3 81:13 listing 47:9 65:3 66:25 literally 53:10 litigation 25:17 28:13 42:15,20 43:9 little 20:17 28:1 47:4 70:19 live 41:22 LLC 2:15 7:21 LLP 2:11,17 4:15 6:9 7:17,20 loan 78:20 located 77:14 lodged 75:10 long 23:8 28:15 30:13 57:19 72:18 longer 59:24 long-time 20:24	loosely 19:13 loss 80:18 lot 12:23 59:22 60:21,23 love 73:6 LP 1:5 7:7 77:3 luck 84:6 Lunch 59:11 lynchpin 76:24 <hr/> M <hr/> macdonald 6:13 MacDonald 10:5 36:10,18,20 50:23 70:10,12 magnitude 47:11 mail 60:24 61:21 mailing 13:10 maintained 77:16 major 25:11,12 78:4 majority 25:25 Malcolm 3:7 7:25 Mall 2:23 3:5,13 4:9 5:8,22 6:5 management 47:12 Managing 6:19 46:21 Mann 4:20 8:11 74:19 Manock 5:4 8:19 74:10 Marc 3:12 8:4 March 46:25 Marcus 2:10 7:14 46:1 61:11 Marion 4:14 8:25 34:17 Mark 5:7 8:19 74:16 75:1 market 5:12 48:14 mass 60:24	material 40:10 50:15 matrix 64:15 66:12 81:13 matter 27:18 38:22 matters 10:16 24:23 may 10:7 12:14 15:2 17:12 25:8 26:2,21 27:14,23 30:13 31:7 36:23 40:19 42:23 44:17 46:19 53:16 61:8 68:1 69:9 77:3,4,6,9,21,23 78:2,9 maybe 11:21 McClellan 6:14 10:4 mccutchen 3:22 McCutchen 9:6 McDonough 5:8 8:20 74:25 McManus 12:25 17:5 20:19 mcquaid 6:13 10:3 36:17 70:9 72:17 McQuaid 10:4 36:17 70:9 72:17,23 mean 13:11 14:5 19:22 37:4,5 39:6 49:12 50:2,7,18,19 53:5 62:18 63:15 64:6 74:8 75:7,8 76:11 82:18,25 meaning 45:1 47:23 71:17 meant 68:18 mediated 12:25 meet 19:23 meets 40:7 Megan 5:21 9:10 memberly 66:10 Memorial 31:22
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

memory 65:1	Monterey 77:17	Mulane 81:20
mentioned 37:20 49:23	Montgomery 2:5	mute 33:14 75:17
mergers 48:12	month 37:6	muted 38:6 75:23
meritorious 84:4	Montreal 3:12 8:5,8 32:25	muters 28:6
merits 25:17	MORGAN 4:3	myself 32:17
Michael 6:13 10:3 36:17 70:9	morning 4:8 7:5,9,12,13,16,19,22 8:4,7,10,16,18,25 9:5,7,10,13,16,17,22 10:1,3 11:13 16:15 20:17 21:17 22:18 23:1,15 29:10 40:23 41:22 42:4,13,22,24 43:17 44:21 49:14	<hr/> N <hr/>
middle 54:8,9	mostly 35:6	Nancy 74:1
Mike 72:17	motion 10:19,20,24,25 11:4,6,7,10,12,14,18 12:6,12,16 13:3,13 14:10 16:1 21:8 22:3 25:4,22 26:4,9,12,14,16,18,1 9,20,22 28:3,4,6,8,16,20,21, 25 29:7,8 37:2,7,14 45:22 46:9 49:15,16 51:19,21,23,25 52:2,21 54:24 55:7,11,14,19,22 56:4,5,9 60:25 61:1,7,10,17 62:4,6 63:17 64:12 75:16,22,24 76:2,3,4,5,6,10,13,2 2,25 77:19 81:2,4 83:17,20	narrow 10:16
million 17:9,22 19:21 31:5 78:23		nature 26:2 47:11 48:1
Mills 4:19 6:25 8:12,14 33:16,19,20 34:11 72:24 74:20		necessarily 18:5 31:16
Milwaukee 4:21 8:11		necessary 11:4,18 17:3
mind 20:22		negotiated 19:20 20:19 25:9 30:6
mine 65:21 66:7		negotiations 30:24
minor 38:17 57:9		newly 48:5
minutes 20:9 23:9,25 65:7,11		news 29:11 52:19
missing 12:1		night 10:9 13:2 34:13
mission 44:11		Nobody 25:13
mode 55:4		nodding 67:13
modification 16:25 17:2 36:3 57:8,9		Nolan 6:20 46:22,23 47:7
modifications 25:1		non 40:10 43:8 47:16
modified 16:8 18:14,21 19:23 21:17,19,22 24:4,17		none 9:20
modify 19:8		Nonetheless 20:21
moment 22:15 53:15		Nor-Cal 3:21 9:6
moments 22:4		North 5:5
Monday 13:9,14 14:7,14 82:22 83:5	motions 10:23 28:9,24 29:12 52:7 75:23 76:1	Northern 77:15
money 17:9,10,14 18:1,2 19:18,21 20:4,6,7	move 14:22 16:3,14 34:8 40:1 55:8	note 63:16 83:21
Monroe 3:17	moving 28:21,24 35:4 76:1 83:22	noted 32:1
		nothing 22:11
		notice 12:25 13:2,6,9,12,25 14:3,14 15:7,10,13,25

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

16:18 25:11,12 26:18,25 42:20 43:3 44:25 45:5 47:21 49:24 50:10,16 51:15 52:5,6,16,17 53:8,9 54:24 55:5,6 56:14 59:19 60:2,5,6,13,17,19,23 ,25 61:4,19,22,25 62:4,12,23 63:3,7,8,10 64:3,10,13,15,18,19, 20,22,23 65:22 66:12 67:6 76:6,12,14,15 81:4,8,9,11,16,18 82:1,6 noticed 81:3,6 notion 57:13 58:6 notwithstanding 26:5 57:23 nub 34:5 Nuti 2:3 7:10 NY 6:10 <hr/> <div>O</div> <hr/> Oakland 4:16 object 45:12 48:16 55:2,7 64:4 67:14,19 objected 31:18 53:22 objecting 42:14 objection 13:18 15:22 16:2 24:11 31:10,22 32:2,13,20 33:1,2,7,9,13,15 35:2 38:3,6 41:8,21,22,23 42:3,7,10,15 44:8 67:24 objections 14:11,21 15:6 29:17 31:7 34:20,23 35:24 38:7,10 41:13,15 45:10,15 51:13 53:23	objectives 79:12 objects 24:17 obligated 78:18 obligation 17:20 obtain 17:21 18:8 30:22 48:7 53:1 79:18 obtained 48:14 53:11 79:15 obtains 43:25 obviously 29:10 30:2 54:22 56:23 occur 35:22 o'clock 7:6 26:10 58:16,24 59:7 83:4,9,15 Odenberg 6:3 9:14 33:5,7 69:9 72:14 74:18 Oelsner 4:8 9:16 42:12 43:10,13,21 44:6,25 45:6 Oeslner 43:19 offer 29:23 30:3 46:18 48:17 57:11 62:20 66:15,21 67:15,18,20 68:1,5 81:23 offered 81:22 offering 64:8 office 13:3 26:8,10 31:24 offices 30:19 57:1 72:13 Official 2:21 7:17 19:19 officially 30:18 Oh 18:19 68:5 74:8 okay 20:16 21:16 22:10 27:25 29:6 31:20 56:16,20	59:4,13 69:13 72:4 Olam 5:3 6:22 8:20,21,22 19:2 22:7,8,21,23 30:9,10 31:5 34:25 39:11 40:20 48:8 53:14 67:24 74:11,24 Olam's 39:17 ones 61:18 64:12 one-year 18:15 Onion 9:3 Onions 4:12,13 9:2 34:18,19 oOo 1:13,18 7:1,4 18:16,18 20:10,12 23:12,14,19,21 38:11,13 53:17,19 59:10,12 65:15,17 72:1,3 84:7,9 open 26:22,24 operate 78:15 79:7,21 operated 78:7 operating 16:12 34:2 operation 30:23 42:6,16 80:17 operations 4:19 8:12 48:7 79:10 opinion 11:4 52:12 63:3 opportunity 14:11 opposed 12:8 22:1 opposes 16:23 21:19,21,22 25:13 opposing 21:16 49:2 opposition 77:20 option 18:15 order 10:14,20 11:5,7,12,13,14,15,1 8,23 12:2,8 13:9 26:8,12,15,21,23 27:4,5,15,23
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

28:4,8,15 31:8 34:4,7,12 36:7,22 37:4,15,21,22 39:24 40:2,4,9 43:11 45:3 49:13,15,21 50:10 51:22 53:1,11 54:10,11 55:18,20,21,22,25 56:11,21,22 57:5,16,24 59:1 60:1,2 64:1,5 65:21 68:16,22 69:5,15,25 70:4,5,14 71:1,3,7,9,12,16,22 72:9,13,16,19,25 73:5,8,11,20 74:2,5 75:16 79:4,17 82:12,16,18 83:15,20,22,25 orders 30:1 48:20 49:7,9 50:7 56:17 69:21 73:15 ordinary 80:2 organized 47:18 48:5 Orick 74:16 original 17:2 Orrick 3:13 8:5 OSC 61:16 others 51:12 66:23 ours 36:6 74:23 ourselves 70:19 outcome 85:1 outlined 11:19 45:14 outside 57:6 80:1,12 overlooked 70:20 overly-broad 39:21 overt 44:13 owed 32:3 owing 32:2 78:22 owned 33:20 owner's 39:16	ownership 33:23 40:15,25 41:6 owns 78:5,6 <hr/> P <hr/> P.O 4:16 5:18 PACA 31:13,14 34:21 50:19 pack 9:3,9 16:13 packaging 77:13 78:4 packing 50:20 78:10,11,16 79:10,14 page 32:1 54:8 62:4 71:12 pages 59:4 61:14 paid 17:10 18:1,2 19:13 32:6 35:8 36:20 70:14,16,17,20 Palm 5:5 Palo 3:23 papers 21:7 paragraph 37:22 54:8 57:2,3,5,8,10,13,17, 21 58:3,6,9,11,20 65:22,24 71:1,11,13 parcel 15:17 pared 46:6 Park 6:14 Parkinson 6:3,4 9:13,14 33:8 69:12 74:18 partially 76:23 particular 31:12 33:21,25 46:8 50:3,12 51:16 52:15 60:4,21 81:15 particularly 20:22 30:22 51:4 parties 12:18,21 14:11 15:18 16:19	17:11 21:8 23:4 24:21,24 29:1 34:8 35:25 37:11 42:20 43:3,14 44:25 45:1 46:10,13,24 47:9,20 48:3 51:10,11 53:22 55:15 56:25 58:10 59:20,22 60:2,18,22 61:21 65:3 66:3 67:22 68:21 69:16 73:15 74:1,4 75:5 78:20 81:3,4,17,23,25 82:10,15,16,23 83:3,8,22 85:1 Partnership 1:5 party 28:21,24 43:24,25 53:3 54:23 55:6 57:19 60:3,5 62:22,23 67:3 69:1 76:1 81:5 Pascuzzi 3:3,4 7:22 15:2,9,15 16:7 20:13 21:5,13 25:21 27:6,16,24 28:11,20,22 38:15,17 39:8 40:22 41:12,17,18 68:20 73:19,23 74:12 Pascuzzzi 7:23 passed 79:21 80:17 past 10:24 Patricia 1:25 85:1 Paul 3:3 7:22 15:2 21:5 27:6 73:19 74:12 pause 32:7 pay 17:5 31:14 35:10 36:13 70:21 paying 50:21 payment 36:14 70:20 payments 32:12 pending 17:16 42:15
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

<p>people 14:14 41:3 66:23 84:4,5</p> <p>perception 44:24</p> <p>perform 19:5</p> <p>performing 70:6</p> <p>perhaps 16:19 43:21 55:10</p> <p>period 58:1 63:23 71:4 78:14</p> <p>perishable 77:13 80:5,14</p> <p>person 85:1</p> <p>personal 43:6 78:25</p> <p>persuant 49:15 77:11 79:3,17 81:6,10 82:4,8</p> <p>pertain 46:11</p> <p>Peter 5:16 9:22</p> <p>Peterson 6:24 8:14</p> <p>petition 78:18,22</p> <p>petitions 77:8,9,10</p> <p>ph 46:10,22</p> <p>Phelps 6:20 46:21,23 66:23</p> <p>Phinney 6:4 9:14</p> <p>Phoenix 4:5</p> <p>phone 9:21 10:6 21:20 24:16 25:13 32:8,14 36:11,15 75:21</p> <p>phones 23:18</p> <p>phrase 66:1 71:15</p> <p>piece 45:3</p> <p>piecemeal 42:6,19 79:22,23 80:19</p> <p>Piper 6:9 10:2 75:20</p> <p>pitched 52:20</p> <p>placed 47:21</p>	<p>plan 57:6 72:11 80:12</p> <p>plant 16:12 33:21 47:1,2 78:5,6</p> <p>plants 33:22 47:2 77:14 78:5,6</p> <p>players 25:13</p> <p>Plaza 5:12</p> <p>pleadings 33:10</p> <p>please 23:15 59:13 65:10,18 74:7</p> <p>plus 17:7 60:19</p> <p>podium 29:7</p> <p>point 4:14 9:2 22:1 30:20 31:3 34:19 36:24 40:18 48:3 50:6 51:5 58:3 60:9,10 63:15,16 65:5 68:6 77:23 82:10 84:1</p> <p>pointed 40:6 41:1 64:25 68:16 81:12</p> <p>points 38:18</p> <p>polled 24:10,12</p> <p>pop 63:23</p> <p>population 59:19</p> <p>Port 4:21</p> <p>position 47:10 54:2 63:9 67:11 68:8</p> <p>possession 42:23</p> <p>possible 15:25 19:3 29:23 31:13 47:9 48:15</p> <p>possibly 33:21 47:14 51:12</p> <p>post 30:23</p> <p>post-closing 48:7</p> <p>post-compromise 12:17</p> <p>post-petition 79:6</p> <p>potential 24:24 47:21</p>	<p>58:9 66:4</p> <p>potentially 34:21</p> <p>practical 13:15</p> <p>precautionary 25:23</p> <p>prefer 56:17</p> <p>preferred 13:7 42:18</p> <p>prejudice 18:25 75:24</p> <p>premised 36:3</p> <p>prepare 13:17 78:10</p> <p>prepared 15:8 19:6 25:2,15 26:6 27:22 40:1 49:2,4 51:7 63:17,25 66:15</p> <p>preparing 12:23</p> <p>present 6:18 7:12 8:22 32:22 33:7,12,16,20 35:11 68:4 73:5 83:6</p> <p>presented 15:10</p> <p>presenting 37:1</p> <p>presently 22:19 32:2</p> <p>preserve 71:8</p> <p>preserved 43:8 71:4</p> <p>President 6:20 46:22</p> <p>Presiding 1:17</p> <p>presumption 67:5</p> <p>pretty 59:24</p> <p>previous 64:19</p> <p>previously 49:10</p> <p>price 32:7 48:15</p> <p>prior 12:20 43:17 77:9 79:14</p> <p>probably 54:19</p> <p>problem 15:4 35:20 41:2 59:3</p> <p>procedural 26:13</p> <p>procedurally 10:19</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

<p>procedure 79:16</p> <p>procedures 10:19 11:5,19 49:17 79:17</p> <p>proceed 10:7 12:14 13:12 23:16 24:23 29:23 45:4,15 46:17 66:15 68:1</p> <p>proceeded 12:11</p> <p>proceeding 21:9,10 23:17 29:3 45:1 52:15</p> <p>proceedings 1:14 7:3 24:1 77:6 84:8</p> <p>proceeds 35:9</p> <p>process 30:12 42:24 45:17,21 47:3 48:1,12 53:5,20 60:17 72:9 73:11,13 84:4</p> <p>processing 77:13,14 78:4</p> <p>Processor 8:21</p> <p>Processors 5:3 6:22 30:11 74:11</p> <p>produce 4:14 9:2,3,9 34:20</p> <p>products 77:14</p> <p>professionals 48:11</p> <p>progress 84:5</p> <p>proof 29:24 46:18 48:17 57:11 61:6,13 62:20 66:16 67:15,18,20 68:1,6 81:23</p> <p>proper 55:4</p> <p>properly 12:20</p> <p>property 38:21 39:20,22 63:19 66:2 67:2 68:7 69:4,6,7 78:25</p> <p>property's 39:17</p>	<p>proposal 17:2 19:22</p> <p>propose 14:13</p> <p>proposed 7:10,17 10:10 11:13 14:25 22:12 24:11,17 30:1 32:3 34:3 42:14 43:11 45:2 48:20 49:7,9,13,21</p> <p>protect 42:25 43:14,22</p> <p>protected 43:7</p> <p>protection 19:15,18</p> <p>protections 15:18 19:16,17</p> <p>protective 28:4,8,14 32:25</p> <p>provide 51:15 52:5 53:12 61:16 71:6</p> <p>provided 13:1 35:24 45:5 52:16 81:10</p> <p>providing 52:5</p> <p>provision 17:18 19:20 52:13 57:9 58:12 68:22,23 70:15 71:18</p> <p>provisions 39:24 49:25 51:6 54:2</p> <p>prudence 14:6</p> <p>prudent 63:4 72:6</p> <p>publication 60:15</p> <p>pull 59:21</p> <p>purchase 17:22 19:3 30:5 31:2,6 39:5,10,19 40:24 45:19 46:6 47:10,14 54:4,5 69:4 71:15</p> <p>purchaser 18:9 30:11 49:3 56:23</p> <p>purchasers 47:22</p> <p>purchasing 48:6</p>	<p>purported 23:3</p> <p>purporting 39:16 68:17</p> <p>purports 71:2</p> <p>purpose 45:22 71:7</p> <p>pursuant 60:12</p> <p>puts 63:18</p> <p>Putterman 2:16 7:19,20 16:6 20:3,13,16 27:7</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications 30:22 31:15</p> <p>qualified 30:20,21 31:14</p> <p>quantifying 26:2</p> <p>Quesenbery 4:14 8:25 9:1 34:17,24</p> <p>question 12:25 14:2 22:22 40:15 49:25 55:9</p> <p>questions 30:3 56:18</p> <p>quickly 23:6</p> <p>quite 40:7</p> <p>quote 62:5</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R.F 6:13 10:5 36:10,18,20 50:23 70:10</p> <p>raise 14:11</p> <p>raised 70:1</p> <p>raising 54:19</p> <p>RAL-21 11:17,19 12:2,8 49:16 51:19 76:5,25</p> <p>RAL-212 10:20</p> <p>RAL-22 11:11</p> <p>RAL-23 11:15,17,21,23</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

12:6,9 55:23 77:1 randomly 64:1 rather 32:19 33:6 58:7 re 1:4,7 81:20,21 reach 10:15 19:3 34:25 reached 17:4 34:14 35:14,25 36:13,19 46:12 70:12 reaching 12:24 ready 47:3 65:14 real 44:15 67:2 78:25 realize 52:1 really 11:5 15:21 25:24 34:2 37:8 38:18 42:9 60:2 63:24 reason 11:22 12:7 13:18,24 14:7 54:15 60:4 74:25 reasonably 81:16 reasons 12:11 25:24 recall 11:8,9 17:15 55:21 receipt 22:3 receive 22:2,3 37:15 64:3 81:8 received 35:2 50:10 51:13 52:6 54:24 55:6 62:23 63:6,16 64:10,12 67:6 81:25 82:5 receiving 80:22 81:4 recent 10:24 60:25 recess 22:16 23:5,13 58:15 59:11 65:9,16 recital 58:20 recitation 61:4	recite 26:23 recited 70:11 recognizes 37:19 recollection 51:20 reconcilable 54:2 record 15:1 18:17 20:11 22:2,5,20 23:20 24:4 25:5 30:10 31:3 38:12 49:4,11 50:6 53:18 69:15 72:2,8,19 76:22 records 43:16 67:1 red 29:25 34:12 49:8,9 69:15 71:12 reduce 30:12 reduced 34:6 reference 36:9 57:17 65:1,23 66:14 71:16 referenced 16:8 references 62:10 referred 77:3,5,7 78:21 81:12 referring 40:22 reflect 34:13 reflected 36:14 reflection 35:8 reformed 40:9 regard 12:19 41:14 49:1 regarding 39:16 regards 7:7 25:5 64:23 82:6 rejected 32:4 rejection 75:17 relate 41:24 related 17:24 25:10 29:13 35:5 41:14	58:12 67:1 relates 36:9 61:25 relationship 59:23,24 relationships 20:24 relevant 17:6 47:20 77:12 79:12 80:1 remain 65:18 remember 66:9 removed 38:21,22 82:19 83:7 rendered 33:14 renewed 11:13 55:19,20 renoticed 55:14 reorganization 57:6 repeat 74:3 replacement 79:6 report 29:15 reported 1:25 85:1 Reporter 85:1 Reporter's 1:14 representation 42:1,18 45:7 representatives 6:25 8:13 represented 22:24 38:24 representing 8:11 9:11,14,17,24 10:4 represents 32:4 request 11:7,14 22:16 26:23 28:12,16 48:20 55:22 56:10 61:19 81:17 requested 26:22 47:20 68:21 70:2 requesting 82:10 required 10:16 17:8 19:9 43:14 72:23
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

requirement 50:16	revised 49:24	15:6,17,19,20,22
requisite 63:22	revising 66:9 72:13	16:2,3,12 19:9 21:21
rescheduled 64:20	revisions 70:5	25:4,7 26:4
rescue 44:11	revisited 55:20	29:8,11 30:1
reserve 35:23	revolving 78:19	35:18,23 37:4,15
reserves 22:2 68:24	RHM 1:8 7:7	41:9,11,14 42:5,14
reset 56:6	77:4,5,6 78:6	43:11 45:4,13
resolution 16:2	Richard 2:9 7:13 38:1	46:24 47:13 49:20,24
28:5 31:11 32:21	82:20	50:2,3,17 51:21
33:11 35:7 64:2	rights 22:13 24:14	52:12,14,17,21,24
resolutions 10:15	39:11 60:18 71:2,8	53:11 54:10,11,24
resolve 16:11 68:25	risk 13:15 16:20	55:3,5,7,11
71:7	24:25	56:4,21,22 57:6
resolved 15:6 33:2	risks 15:18	58:17 59:15,19 60:11
38:10,15	River 4:14 9:2 34:19	61:17 62:1,4,5,22,24
39:1,18,24,25	RL-23 45:23 46:3	63:4,7,11,17,22,25
40:17 41:4,10	road 4:21 6:14 60:8	64:4,10,14,16,24
45:16 46:14 53:23	Robbins 6:24 8:14	66:18,19 67:21
resolves 33:7 34:23	Robert 1:17 5:11 8:16	68:10,11 69:5,6
resolving 50:21	Roca 4:4 8:2 74:13	75:23 76:3,4,24
respect 29:8 30:17	Roldan 6:8 10:1 21:24	79:13,16,19,20
40:12	32:9,15,16,17 75:20	80:1,2,7,9,11,15,16,
respective 77:18	room 47:17,18 66:24	23,24 81:1,2,3,14,24
respond 12:3	70:19	82:3,5,7 83:16,17,20
response 55:13	rule 21:9 23:16	sales 15:16 25:22
rest 58:22	50:11,15 55:6	36:4 37:21
restrict 39:16	61:17 63:5 77:11	Salinas 5:18 31:21
result 56:7 78:15	81:7,10	Salyer 3:3 7:24 8:1
79:22,24 80:18	ruling 15:11	15:6 17:24 19:13
resulted 10:20	rushed 20:17	20:1 22:9 25:10
resume 23:8,10	Ryan 4:15 9:1	28:12 31:1 38:8
58:16,24 59:6		41:9,13,14 68:20
retained 78:2		74:12 78:21
return 79:24		Salyer's 18:24 28:3
reverse 40:5		Sam 34:10 72:24
review 47:17		Samuel 4:19 8:10
reviewed 13:21		74:19
34:12 47:11 49:13		San 2:6,12,18 5:13
58:23 83:3		30:19
		satisfied 13:25 58:22
		saved 23:25
		saw 43:10 51:21 61:6
		scanning 54:9
		schedule 38:19 73:8,9

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

75:13 scheduled 52:4 schedules 59:21 Schnader 2:5 7:10 scope 29:21 60:21 Scott 3:3 7:23 8:1 38:8 search 44:11 season 78:10,11,16 79:10,15 seasonal 78:8,9 seated 23:15 59:13 65:18 second 10:25 17:19 30:21 48:8 secondly 43:5 secret 42:21 44:14 60:6 secrets 41:24 42:8,25 43:4,6,23 section 39:19 52:25 54:3,6 62:6 65:23 79:25 80:2,25 82:4,8 sections 62:11 66:14 secure 19:2,9 secured 8:6,9 25:11 35:5,16 37:18 60:10 62:23 67:7 74:17 78:21,24 79:5 82:6 security 54:16 Sedgwick 5:12 8:17 seeing 37:13 seeking 17:16 54:7 seeks 46:7 seemed 25:25 seems 72:6 seen 35:14 48:21 50:7 Segal 2:5 3:7,8	7:10,25 Select 4:12 9:3 34:19 sell 25:6 38:25 41:1 44:2,14 47:1 62:19 81:8,17 seller 43:15 53:1 selling 40:16 50:20,21,22 60:12 62:9,13 send 73:17 senior 47:12 78:21,23,24 79:3,5 sent 49:24 sentence 54:9 71:1,6 separate 50:16 77:5 separately 31:13 77:3,5 September 78:12 series 34:16 serve 13:2 61:9,16 served 61:7,8,14,19,20,22 64:19 service 26:10 50:14 55:4 61:6,13 session 12:22 setting 80:21 settled 28:14 settlement 12:24 16:2,8 20:18 21:3,12,13,17 22:1,5,9,12 23:1 26:18,19 27:4,17 28:18 31:1 38:10 41:11,19 settling 15:21 seven 43:15,16 several 34:1 share 52:9 55:16 62:16	Sharp 2:3 6:18 7:11 67:15 77:20 sharper 65:20 short 16:17 23:5 25:12 66:10 shorten 56:1 shortened 51:23 shortening 11:7,14,15,23 26:8,12,21,24 51:25 55:18,20,21,22 56:11 shorter 30:13,14 shorthand 85:1 shortness 13:5 showed 67:1 shown 60:22 sign 27:5 40:2 72:15,19,23,25 73:15,17,20 74:1,4,22 82:18 83:20 signature 27:10 73:22 signatures 27:15 35:15 72:12 signed 35:16,17 37:17 47:15 75:8,10 83:7,17 significant 78:9 significantly 79:24 signing 74:9 silence 67:25 silent 64:23 simply 13:13 33:24 42:19 57:13 64:20 66:13 67:6 82:18 83:18,21 sit 40:23 41:3 site 47:23 sites 47:25
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

situation 19:5 35:21 44:17 60:12 64:7 six 60:20 82:21 SK 1:5 7:7 28:9 40:25 77:4,6 78:5,7 slight 14:24 20:3 slightly 10:14 Smith 6:22 8:22 48:24,25 49:5 smoothly 23:17 sold 33:24 40:13 43:4 47:2 50:4,11,13 51:5 80:14,21 81:6 solicit 67:16 solid 48:14 solution 62:17 somebody 54:16 somehow 44:15 54:17 58:2 70:20 someone 67:14 sometime 75:9 somewhat 17:25 sorry 18:19 20:9 36:23 65:21 74:8 sort 44:11 59:23 sorters 9:15 sought 46:5 sounds 22:4 75:22 space 70:22 speak 22:16 24:7 special 2:9 7:15 61:18 Specialty 7:7 77:4 specific 11:7 45:3 54:7 specifically 52:12 54:3 56:25 73:24 80:4 81:11	specifies 11:19 specify 62:4 spending 12:22 spent 23:24 Spiotto 3:16 8:7 33:3,4 37:19,25 71:2 spoke 32:18 71:1 spoken 39:23 SSC 2:15,16 7:20,21 12:18 14:25 15:5 16:6 17:10,19,23 19:7 20:1 22:12 24:4 27:8 38:8 stand-alone 12:8 standards 19:24 standpoint 53:6 stands 83:23 Star 4:8 9:18 41:22 42:4,13,22 44:21 state 32:15 42:2,16 85:1 stated 67:5 82:11 statement 27:17 55:18 67:13 statements 48:17 States 1:1,15 status 59:15 statutory 62:5 stay 27:19 57:21 stayed 42:16 step 40:1 60:19 Stephen 8:22 48:22,24,25 stepped 53:22 65:4 Steve 6:24 8:14 STEVEN 6:22 stipulated 38:5 70:13 stipulation 29:2	36:19 37:7,14 46:12 70:11,13 72:18 stipulations 30:17 stocking 31:4 Strawn 2:11 7:15 30:19 69:24 Street 2:5,12,17 3:8,17 strong 48:4 structured 39:11 subcontract 39:15 subcontracting 39:11 subcontracts 39:12 subject 34:22 36:25 37:20 39:22 40:15 50:3 52:5 71:6 submit 26:8,12,15,21 27:14 29:1 48:10 83:22 submitted 29:25 42:1 48:4 49:1,10 53:11 56:10 69:16 75:5 82:12 submitting 72:5,10 subsections 62:7 subsequent 10:23 55:22 subsequently 17:13 18:4 substantial 20:21 80:6,18 substantially 10:16 78:25 80:2,8,11 substantive 17:16 21:8 success 25:17 successful 12:24 17:21 18:9 19:2,11 22:7 29:16 79:19
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DIAMOND COURT REPORTERS

1107 2ND Street, Suite 210
Sacramento, California 95814
(916) 498-9288

successor 57:18 sufficient 65:11 73:14 81:19 sufficiently 81:2 suggest 10:13 26:7 64:3 suggests 42:7 Suite 2:5,17 3:5,8,13 sum 15:21 17:5 summarizing 12:7 summing 76:12 supplement 18:25 support 21:2 46:13 supportive 24:3 sure 11:17 13:23 15:25 21:14 40:2,17 44:15 63:21 68:18 70:12,18 surfaced 52:9 surprise 52:10 surprised 52:18 Sutcliffe 3:13 8:5 74:17 sworn 67:16 syndicate 78:19 Systems 31:22 <hr/> <div style="text-align: center;">T</div> <hr/> taking 48:16 56:22 talk 29:13,20,22 51:20 talked 56:4 talking 76:15 talks 39:19 technical 29:20 30:15 T'ed 15:21,25 telephone 24:12 telephonically 5:16	temporary 78:13,14,19 ten 23:24 65:12 ten-day 27:19 57:21,24 term 18:14 71:12,21 78:20 terminated 12:20 39:9 terms 19:3 20:2 23:1 30:2 39:15 40:9 69:17 71:16 testify 47:7 65:2 testimony 64:8 67:16 thank 10:8 12:15 23:11,23 27:24 34:25 37:25 48:19 49:6 59:8,9 68:2,13 75:2,12 83:24 that's 12:4,10 15:12 20:15 32:9 33:8 41:5,16 45:24 48:23 49:18 55:24 58:18 61:15 67:9 69:12 75:22 76:13 thereafter 85:1 therefore 38:6 they're 27:20 third 43:24,25 62:22,23 67:22 Thompson 6:14 10:4 thoughts 59:17 three-page 61:3 Thursday 7:2 56:7 THURSDAY, _JUNE_25, _2009 1:16 tied 26:13 tight 73:8 timeline 75:4 tires 47:25 title 50:8 67:1	Tne 47:23 today 8:13 11:16 12:1 13:16 14:18,21 15:1,5 16:2,3,14,21 21:23 24:5,22 25:2,4,8,13,19 26:9,17,20,22 32:22 42:14 46:20 49:1 52:3,19 60:15 64:8 69:15 73:8,9,15 75:10 76:11 79:11 80:10 today's 56:7 79:18 tomato 3:21 5:3 8:21 9:6,15 18:3 19:18 20:5,21 22:25 30:10 42:9 68:15 74:11 78:10,11 79:10,14 tomatoes 17:23 19:3,10 32:5,6,12 47:3 77:13 78:8 tomorrow 73:4 83:4,9,15 ton 73:12 top 37:12 Torres 2:17 7:20 total 61:20 totally 42:19 trade 41:24 42:7,8,21 43:4,6,23 trading 25:21 transaction 36:4 37:20 50:15 transcribed 85:1 transcript 1:14 transfer 53:12 66:2 transferred 43:23 71:19 transmitted 44:1
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

treated 31:13	typically 78:11	19:19 71:5
trial 13:17	<hr/>	untrue 42:19
tried 11:20	<hr/> U <hr/>	upcoming 78:10 79:10
trucks 38:19,23	U.S 13:3 61:21	upload 27:3
true 33:24	UCC 66:25	upon 82:23
trust 18:24	Uesugi 4:12 9:3	urge 16:14
trustee 2:3,9 6:18	ultimate 30:11	urgency 27:18
7:11,15 12:17	ultimately 47:15	urgentness 25:6
13:25	79:22	USA 60:15
17:5,12,13,21	unable 17:25 48:7	USC 62:6
18:4,5,7 19:8 22:7	uncertain 41:6	<hr/>
24:6 25:10 34:14	unclear 36:12	<hr/> V <hr/>
35:16 37:17 41:1	underlying 26:1 61:17	Valley 31:22
42:23,24 43:5,7,22	understand 12:13	value 32:5 35:10
44:2 46:2,5,7	13:22 14:20	80:7,15,20,23
57:14 58:7 61:12	15:7,15 16:3 22:23	Van 5:21 9:11 46:10
62:21 63:18 64:8	32:9 35:15 40:6	variety 14:22
65:2 66:16,22	41:23 55:8 56:15	various 12:23
67:12,19 68:8,25	62:25 64:18 68:23	29:15,17,20,22
69:24 70:3,5	69:9 75:15 83:2	VEGETABLE 4:13
77:19,21,24	understanding 11:16	vehicles 38:19
79:2,9,18,20	24:2,24 36:5,19 37:5	40:21,23 69:2
80:16,22 81:22 82:1	40:14 48:1 55:13	verifying 38:23
trustees 16:9	56:11	version 45:19 69:16
trustee's 20:25 22:24	understood 23:7 46:25	versus 81:20
79:7 81:8,17	51:24 55:25 56:3	Vice 6:20 46:22
Trustees's 13:3	undertake 44:11	view 15:16 47:21
trusts 21:10	undertaken 45:21	60:9,10 69:17
try 19:1 29:12 72:11	undue 58:4	viewed 36:12
trying 15:24 38:24	unexpired 54:16 68:18	Vince 32:17
55:16 62:17 63:15	unfortunately 34:24	Vincent 6:8 10:1
T's 13:23	United 1:1,15	21:24 75:20
Tuesday 19:6 20:19	University 3:23	visited 47:24
turn 23:18 28:2 29:6	unknown 45:4 53:7	visits 47:23
turned 29:2	54:15	volume 78:12
Turning 81:1	unless 67:14	voluntary 77:5,9,10
two-word 71:10	unlike 35:21	votes 22:18
two-year 18:14	unresolved 29:19	
type 52:20 58:12	unsecured 2:21 7:18	
typewriting 85:1		

<hr/> <p style="text-align: center;">W</p> <hr/> <p>waive 21:9 27:20</p> <p>waiver 57:21</p> <p>walk 29:12,17 30:2 31:8</p> <p>walked 47:25</p> <p>Washington 4:21</p> <p>wasn't 36:8</p> <p>waste 12:19 20:6 39:20</p> <p>water 12:19 20:6</p> <p>ways 59:25</p> <p>weather 47:5</p> <p>web-based 47:19</p> <p>week 11:2 79:11</p> <p>Weintraub 9:17</p> <p>we'll 27:2 69:13</p> <p>West 3:17 5:3 6:8 8:20 10:2 18:10 21:25 22:2,6,8,13,22,25 24:13 30:9 31:25 32:7,10,17 48:5 74:11 75:16,21</p> <p>whatever 44:11,16</p> <p>wherein 30:8 35:22</p> <p>WHEREOF 85:1</p> <p>Whereupon 84:8</p> <p>whether 12:19 29:18 39:9,21 55:9 59:15 69:2 80:13,14</p> <p>whichever 77:24</p> <p>wholesale 52:20</p> <p>whom 20:23</p> <p>whomever 26:11</p> <p>WI 4:21</p> <p>Wilke 5:22</p> <p>Wilkie 9:11</p>	<p>WILLIAM 3:21</p> <p>Williams 5:16 9:22 33:21 35:6 47:24 78:6</p> <p>willing 16:10 19:4 50:5</p> <p>Willoughby 3:4 7:23</p> <p>Winchester 5:16 9:8,25</p> <p>window 70:17</p> <p>winning 31:5 48:9</p> <p>Winston 2:11 7:14 30:19 69:23</p> <p>wish 72:15</p> <p>wishes 24:16</p> <p>Wisotzkey 4:19 8:10,11 34:10 72:24 74:19</p> <p>withdraw 75:24</p> <p>withdrawing 28:12,15</p> <p>withdrawn 28:10,21,24 76:1</p> <p>WITNESS 85:1</p> <p>wondering 14:6</p> <p>wooden 38:20</p> <p>work 37:25 78:12</p> <p>worked 20:23 84:4</p> <p>workers 78:14</p> <p>works 34:3</p> <p>worth 17:6,22</p> <p>writing 85:1</p> <p>written 60:1 82:11</p> <p>wrong 43:12 64:23</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yesterday 16:8 19:1 26:11 30:18 40:21 46:12 57:1 79:16</p> <p>yesterday's 79:19</p>	<p>yet 60:9</p> <p>yielded 53:21</p> <p>York 6:10</p> <p>yours 66:7</p> <p>yourself 75:1</p> <p>yourselves 32:15</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------